

## **EXHIBIT B**

### **MONTEREY AMENDMENT TO THE STATE WATER PROJECT CONTRACTS (INCLUDING KERN WATER BANK TRANSFER) AND ASSOCIATED ACTIONS AS PART OF A SETTLEMENT AGREEMENT (MONTEREY PLUS)**

## **FINDINGS AND DETERMINATIONS**

### **INTRODUCTION**

CEQA *Guidelines* Section 15091 states:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
  - (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
  - (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

The final EIR is the Draft EIR (DEIR), the Final EIR (FEIR), and related appendices. As required by CEQA *Guidelines* Section 15132, the final EIR

includes a list of persons, organizations and public agencies that commented on the DEIR; comments and recommendations received on the DEIR either verbatim or in summary; and the Department's responses to significant environmental points raised in the review and consultation process.

As required by CEQA *Guidelines* Section 15091(e), the custodian and location of the final EIR and other documents or other materials which constitute the record of the proceedings are as follows:

Mitigation Restoration Branch  
Division of Environmental Services  
Department of Water Resources  
3500 Industrial Blvd.  
West Sacramento, CA 95691

Other documents included in the administrative record may be found in other locations, but can be obtained by contacting the custodian of records identified above.

## **ORGANIZATION**

This document is divided into the following parts.

### **Part I: Project Specific Findings on Environmental Effects**

Part A: Potentially Significant Impacts Reduced to Less-than-Significant  
Part B: Potentially Significant and Unavoidable Impacts

### **Part II: Findings Regarding Alternatives to the Proposed Project**

### **Part III: General Determinations Relating to the Monterey Plus CEQA Decision-making Process**

## **PART I PROJECT SPECIFIC FINDINGS ON ENVIRONMENTAL EFFECTS**

Because the SWP had been operated under the Monterey Amendment for over seven years before the Department issued its Notice of Preparation of the DEIR in 2003, the EIR analyzes two time periods – historical or past (1996-2003) and future (2003-2020). Both time periods have a baseline of 1995. In the time period 1996-2003, the final EIR found that the proposed project had no significant impacts. In the time period 2003-2020, the final EIR identifies some potentially significant impacts. As identified in Part A, some of these potentially significant future impacts will be reduced to less-than-significant with incorporation of identified mitigation measures. The Department finds that

incorporating the changes or alterations recommended in the mitigation measures into the proposed project will avoid or substantially lessen the potentially significant environmental impacts as identified in the final EIR.

As identified in Part B, some potentially significant future impacts will not be reduced to a less-than-significant level by the inclusion of mitigation measures identified in the final EIR as part of proposed project approval. This is either because there are no feasible mitigation measures or the feasible mitigation measure(s) would only partially mitigate these significant impacts and the residual effect would remain significant. These are therefore significant unavoidable impacts attributable to the proposed project. See Exhibit C for a Statement of Overriding Considerations relating to significant and unavoidable impacts.

In addition to the specific findings, Part A and Part B provide the rationale and background supporting the findings. They summarize the potentially significant impacts and recommended mitigation measures, referencing both the impact and mitigation measure number, if any, as found in the relevant sections of the DEIR. These summaries and references to the DEIR and/or FEIR are not intended to be a comprehensive restatement of the analysis in the final EIR or other information in the record and do not substitute for those documents, but rather, provide background and context for the particular findings. The specific mitigation measures that are within the responsibility and jurisdiction of the Department are also included in the Mitigation, Monitoring and Reporting Program (MMRP) found in Appendix D.

In these findings, impacts are grouped together by activity and resource, and include the related cumulative impacts, as follows:

**Part A: Potentially Significant Impacts Reduced to Less-than-Significant Level**

**1. Water Supply Management Practices – Delta Fishery Resources**

Impact 7.3-5: Special-status fish species

Impact 10.1-2: Special-status fish species cumulative

**2. Development of the Kern Fan Element Property**

Impact 7.4-3: Special-status terrestrial biological

Impact 7.13-3: Cultural and paleontological

**3. Water Supply Management Practices – Flexible Storage**

Impact: 7.13-4: Cultural and paleontological

Impact: 10.1-20: Cultural and paleontological cumulative

**Part B: Potentially Significant and Unavoidable Impacts**

- 1. Water Supply Management Practices – Southern San Joaquin Valley Groundwater Banks**
  - Impact 7.4-2: Special-status terrestrial biological
  - Impact 10.1-3: Special-status terrestrial biological cumulative
  - Impact 7.13-2: Cultural and paleontological (excluding KFE)
  - Impact 10.1-19: Cultural and paleontological resources cumulative
- 2. Water Supply Management Practices – Castaic and Perris**
  - Impact 7.4-5: Special-status terrestrial biological (Perris only)
  - Impact 10.1-5: Special-status terrestrial biological cumulative (Perris only)
  - Impact 7.4-6: Riparian Habitat (Perris only)
  - Impact 10.1-6: Riparian Habitat cumulative (Perris only)
  - Impact 7.5-4: Visual resources (Castaic and Perris)
  - Impact 10.1-8: Visual resources cumulative (Perris only)
  - Impact 7.7-6: Wind erosion (Perris only)
  - Impact 10.1-11: Wind erosion cumulative (Perris only)
  - Impact 7.8-4: Soil erosion (Perris only)
  - Impact 10.1-13: Soil erosion cumulative (Perris only)
  - Impact 7.9-1: Recreation (Castaic and Perris)
  - Impact 10.1-15: Recreation cumulative (Perris only)
- 3. Plumas County Watershed Improvement Projects**
  - Impact 7.13-6: Cultural and paleontological resources
  - Impact 10.1-20: Cultural and paleontological cumulative (Plumas only)
- 4. Growth-Inducing Impacts**

**PART A**  
**POTENTIALLY SIGNIFICANT IMPACTS REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL BY MITIGATION MEASURES INCORPORATED INTO THE PROPOSED PROJECT**

**1. Water Supply Management Practices - Delta Fishery Resources**

The only change resulting from the proposed project that has the potential to cause an adverse impact on Delta fisheries is the implementation of the Monterey Amendment water supply management practices. These practices could possibly result in longer periods of sustained Delta export pumping relative to the baseline at certain times from November through April (see DEIR Impact 7.3-5, pages 7.3-69 through 7.3-71) when water is available to be exported by the SWP within permitted levels in compliance with State and federal regulatory permits and other requirements, in effect at the time of pumping, that provide

protection for the Delta aquatic environment, including for water quality, listed species and other aquatic resources.

The DEIR identified an increase in exports, within permitted limits at the time, up to a cumulative amount of 44,000 AF during the period from 1996 to 2004 compared to the baseline scenario. The DEIR reviewed these historical events which took place between November and March and concluded that past implementation of the water supply management practices did not result in a significant impact. The FEIR reviewed these events in light of today's current knowledge about special-status species and confirmed the conclusion of the DEIR.

The DEIR also identified a potential for an average annual increase of 50,000 AF in the future from November to April which would be partly offset by the decreases in Delta export pumping attributable to retirement of 45,000 AF of Table A amounts. The DEIR concluded that even though these potential increases would be within permitted limits, there could be a small, but potentially significant, impact from the proposed project on Delta fisheries due to future application of the water supply management practices as a result of potentially increased Delta export pumping. (Delta Fishery Resources are discussed in DEIR Sections 7.3-5, 7.3-6 and 10-2, FEIR Subsections 7.2, especially Subsections 7.2.2.1.3 and 7.2.2.2 and the Response to Comment 6-8 in FEIR Section 7.2. Increased Delta export pumping as a result of the water supply management practices is discussed in FEIR Section 6.4.3 and FEIR Subsections 15.2.1, 15.2.2 and 15.2.3.)

**IMPACT 7.3-5: Implementation of the proposed project's Water Supply Management Practices could potentially affect special-status fish species in the Sacramento-San Joaquin Delta due to Delta export changes.**

In the future, implementation of the water supply management practices could result in increased pumping from the Delta in November through April which could change Delta flow patterns. The changed flow patterns could disrupt the movement of fish species and increase entrainment of adult smelt (delta and long-fin), split-tail, and salmonid smolts. The magnitude of this impact depends on the timing of the increased export rate, the location of at-risk fish, the influence of export pumping on in-Delta channel flows, and other factors. The adverse impact on Delta fish species would be evidenced by increased salvage at the Skinner Fish Facility as a result of increased exports from Banks Pumping Plant during certain periods.

Since the publication of the DEIR, additional regulatory restrictions have been placed on SWP exports by both courts and regulatory agencies based on their view that the best available science at this time requires reduced exports to minimize the effects of pumping on fisheries populations in order to prevent

further adverse impacts to the Delta aquatic environment. Special-status fish species are included within these protections of the Delta aquatic environment.

The FEIR reexamined this impact in the light of current conditions and confirmed the conclusions of the DEIR. To the extent that climate change and regulatory constraints reduce SWP water supply, the Department may export less water from the Delta through the SWP in the future and actual environmental impacts to the Delta aquatic environment will be less than those identified in the DEIR. (FEIR pages 7.2-7 to 7.2.12 and FEIR Subsection 15.2.2.)

**Mitigation Measure 7.3-5:** Responding to these regulatory requirements, the Department modified Mitigation Measure 7.3-5 for potential direct, indirect and cumulative impacts resulting from the water supply management practices to clarify that the "Department shall continue to operate the SWP Delta export facilities in compliance with requirements of federal and State agencies in effect at the time of operation, to avoid, reduce, or minimize potential impacts on the Delta aquatic environment including water quality, listed species and other aquatic resources caused by SWP pumping attributable to the proposed project". The revisions to Mitigation Measure 7.3-5 are for clarification purposes only and do not change the conclusion of the DEIR on page 7.3-71 that implementation of this mitigation measure in combination with environmental programs already in place or forthcoming that are relevant to the SWP would reduce this impact to a less-than-significant level. (Response to Comment 6-8 in FEIR Chapter 7.2.)

The SWP will be operated in compliance with State and federal regulatory permits and other requirements, in effect at the time of the export pumping, that provide protection for the Delta aquatic environment, including for water quality, listed species and other aquatic resources. These requirements include court decisions, regulations, and requirements set by federal and State agencies under State and federal endangered species laws for operations of the SWP, including any operations resulting from the Monterey Amendment, which are designed to minimize the effects of pumping on fisheries populations currently and in the future in order to prevent jeopardy and protect listed species and habitat. The requirements described in the federal and State permits and opinions are currently in effect and are on-going, although they are subject to change. Mitigation measures discussed in the final EIR are not indefinite and vague possibilities; they are presently being imposed on the SWP in ways that serve to mitigate any Monterey Amendment Delta impacts. The Department is legally obligated to operate the SWP facilities in compliance with the requirements of the existing regulatory process under the circumstances described in the DEIR and FEIR. Therefore, in this case, the Department has determined that it is appropriate under CEQA to rely on this continual and ongoing regulatory process to mitigate any potential current and future impacts to the Delta aquatic environment from the proposed project. (DEIR Section 7.3-5, FEIR Subsection 7.2.2.1.3, see especially FEIR pages 7.2-12 to 7.2-18.)

**IMPACT 10.1-2: Implementation of the proposed project in combination with cumulative water development projects could potentially affect special-status fish species in the Sacramento-San Joaquin Delta due to Delta export changes.**

As discussed in Impact 7.3-5, increased future export pumping from the Delta in November through April due to the proposed project could change Delta flow patterns which could disrupt the movement of fish species and increase entrainment of adult smelt and salmonid smolts. Increased entrainment of a special-status fish species that results from the proposed project in combination with other cumulative projects could reduce that species' abundance. Disruption of up or downstream migration could interfere with the movement of resident and migratory species and result in a potentially significant cumulative impact. (DEIR Sections 10.1-2 and FEIR Subsection 7.2.2.1.3.)

**Mitigation Measure 10.1-2:** Implement Mitigation Measure 7.3-5. As discussed in Impact 7.3-5, implementation of Mitigation Measure 7.3-5 will minimize, avoid and/or reduce potential cumulative effects on the Delta aquatic environment from the proposed project now and in the future to a less-than-significant level. (DEIR Sections 10.1-2 and 7.3-5, FEIR Subsection 7.2.2.1.3 and Response to Comment 6-8 in FEIR Section 7.2.)

**FINDINGS:** With regard to Impact 7.3-5 and Impact 10.1-2, the Department finds that changes or alterations have been required in, or incorporated into, the proposed project which avoid or substantially lessen the significant environmental effects identified in the final EIR for these impacts.

## **2. Development of the Kern Fan Element Property**

Some of the proposed project's potential impacts result from the transfer of the Kern Fan Element property from the Department to Kern County Water Agency (Kern County WA or KCWA) which thereafter transferred the property to the Kern Water Bank Authority (KWBA). Although generally these lands are called the "Kern Fan Element (KFE) property" when owned by the Department and the "Kern Water Bank (KWB) Lands" when owned by the KWBA, the DEIR also used the term Kern Fan Element (KFE) property when it referred to the property after it had been transferred. Kern Fan Element or KFE property or KFE as used below refer to the property both before and after the transfer.

In 1995, the KWBA constructed approximately 3,034 acres of shallow recharge ponds in the Kern Fan Element. From 1998 through 2003, KWBA constructed an additional 4,080 acres of recharge ponds, for a total of 7,114 acres in 2003, in the Kern Fan Element. The KWBA also constructed the Kern Water Bank Canal, a six-mile long earthen canal extending from the Kern River to the California Aqueduct. No significant adverse impacts to any environmental resources occurred during this period as a result of this action. Under the proposed project

it is expected that KWBA would construct an additional 1,200 acres of percolation ponds. Future operation and maintenance of these additional percolation ponds and these additional land use changes or construction could have a potential adverse impact on terrestrial biological resources and/or on cultural or paleontological resources. These resource impacts are discussed below. Cumulative impacts relating to these resources that are potentially significant and unavoidable are discussed in Part B.

The KWBA is responsible for implementing the mitigation measures outlined in the Kern Water Bank Habitat Conservation Plan/Natural Community Conservation Plan (KWB HCP/NCCP) for current and future operations and maintenance and for any future construction or land use changes. The KWB HCP/NCCP, approved in 1997 by the United States Fish and Wildlife Service and the California Department of Fish and Game, creates a legally binding obligation on the KWBA pursuant to the State and federal endangered species acts.

Following approval of the KWB HCP/NCCP, the KWBA prepared an Initial Study and Addendum to the Monterey Agreement EIR and Findings and Mitigation Measures on implementation of the Kern Water Bank and the KWB HCP/NCCP (June 5, 1997, State Clearinghouse # 1997107342). The addendum addresses impacts of the proposed project on endangered species, impacts on cultural resources, groundwater impacts on surrounding landowners, and mosquito abatement, among other things. The Initial Study and Addendum/Findings and Mitigation Measures include additional mitigation measures which the KWBA has adopted (and are therefore legally binding) to further reduce impacts on terrestrial biological resources and on cultural and paleontological resources. (DEIR pages 4-6 to 4-7, 7.4-19, Sections 7.4-3 and 7.13-3 and Appendix E and FEIR Subsections 16.2.1 and 16.2.7.2).

The Addendum was not challenged and the Settlement Agreement states in Article III.F that "the Parties acknowledge that the Kern Water Bank is currently operating under the Kern Environmental Permits, which were entered into based on an Addendum to the 1995 EIR. The Parties recognize that the Addendum has been completed and agree not to challenge it in any manner. KWBA agrees that it will not rely on the Addendum to the 1995 EIR for any new KWBA project to the extent that such reliance is based on data or analysis incorporated into the Addendum from the 1995 EIR." Article III.F also requires the Department to prepare an independent study of the impacts related to the transfer, development and operation of the KWB in light of the Kern Environmental Permits. The Kern Environmental Permits are defined in Article I.P. as the KWB HCP/NCCP and other permits, approvals and agreements set forth and contemplated by the Addendum. This study is included in Appendix E of the DEIR. The study concluded, among other things, that the KWB is operating as intended and within the confines of the Kern Environmental Permits. (See also DEIR page 7.4-26 and FEIR Subsection 16.2.7.2)

**IMPACT 7.4-3: Implementation of the proposed project could potentially**



**affect special-status terrestrial biological resources on the Kern Fan Element property due to changes in land use and management.**

Special-status species are known to exist on the KFE property. However, since the approval of the KWB HCP/NCCP, no take of special-status species has been reported or is known to have occurred on the KFE property. (See DEIR Appendix E.) Although unlikely, future operation and maintenance, and construction activities associated with construction of additional groundwater bank facilities and/or land use changes, could result in an adverse impact to special-status terrestrial biological resources on the KWB Lands.

**Mitigation Measure 7.4-3:** The KWBA is legally required to follow specific mitigation measures described in the DEIR on pages 7.4-27 through 7.4-31 to prevent take of special-status terrestrial biological resources and to enhance and preserve the natural habitat currently present either because they are part of the KWB HCP/NCCP or because the KWBA committed to carry them out pursuant to the Initial Study and Addendum/Findings and Mitigation Measures. These mitigation measures include the use of a biological monitor and special construction and on-going practices regarding sensitive species. In addition, the use of a project representative as a liaison between the KWBA and the resource agencies will expedite notification regarding any take of a listed species. Although take of special-status terrestrial wildlife is not anticipated, Mitigation Measure 7.4-3 outlines an avoidance protocol the KWBA is already obligated to employ to further reduce the likelihood of any take.

Together, these mitigation measures and the beneficial net increase of habitat for special-status terrestrial biological resources through implementation of the KWB HCP/NCCP will avoid, reduce, and/or minimize to a less-than-significant level potentially significant impacts to these resources associated with changes in land use and management on the KFE property attributed to the proposed project. (DEIR pages 7.4-26 through 7.4-31.)

**IMPACT 7.13-3: Transfer of land in the Kern Fan Element to the Kern County WA could potentially result in damage and/or destruction of cultural and paleontological resources in the Kern Fan Element as a result of development of groundwater banks.**

In the future, the proposed project could encourage land use changes on KFE property. While damage to cultural or paleontological resources is not expected, any construction activities associated with additional percolation ponds and groundwater bank facilities or land use changes could result in damage and/or destruction of cultural and paleontological resources on KFE property, if any exist there.

**Mitigation Measure 7.13-3.** The KWBA is legally required to follow specific mitigation measures described in the DEIR on page 7.13-22 to prevent adverse

impacts to cultural and paleontological resources because the KWBA committed to carry them out pursuant to the Initial Study and Addendum/Findings and Mitigation Measures. These mitigation measures require that prior to ground disturbing work on KFE property, qualified professionals conduct a survey, and record, evaluate and mitigate any impacts on cultural or paleontological resources identified pursuant to Section 106 of the National Historic Preservation Act. This would ensure that important scientific information that could be provided by these resources regarding history or prehistory is not lost. KWBA is also required to conduct the appropriate examination, treatment and protection of any human remains consistent with State law.

Implementation of Mitigation Measure 7.13-3 will avoid, reduce and/or minimize to a less-than-significant level potential damage and/or destruction of cultural and paleontological resources associated with construction of groundwater bank facilities or percolation ponds or land use changes on KFE property attributed to the proposed project. (DEIR pages 7.13-21 and 7.13-22.)

**FINDINGS:** With regard to Impact 7.4-3 and Impact 7.13-3, the Department finds that changes or alterations which avoid or substantially lessen the significant environmental effects identified in the final EIR for these impacts are within the responsibility and jurisdiction of KWBA, and not the Department, and such changes or alterations have been adopted by KWBA.

### **3. Water Supply Management Practices – Flexible Storage in Castaic Lake and Lake Perris**

Some of the proposed project's impacts result from implementation of Article 54 of the Monterey Amendment. Article 54 allows three local SWP contractors to borrow water from Castaic Lake and Lake Perris under certain conditions. No significant adverse impacts to any environmental resources occurred during the period 1996-2003 as a result of this action. The effects in the future of borrowing water on water surface elevations of Castaic Lake and Lake Perris depend on the extent to which eligible SWP contractors make use of Article 54 as well as hydrological conditions at the time. If a prolonged drawdown occurs due to the proposed project, the exposed area around the perimeter of the two reservoirs could increase. The worst-case condition would occur if the eligible contractors borrowed the maximum amounts of water permitted under Article 54 and the water was not replaced for the maximum permitted duration of five years. The worst-case condition is unlikely to occur because it is in the interest of the Department and the contractors that receive water from Lake Perris and Castaic Lake that those reservoirs are kept full most of the time. (The operational aspects of this action are discussed in the DEIR at pages 4-7 and 6-53 to 6-63 and in the FEIR in Subsection 15.2.5.) Impacts resulting from flexible storage that are potentially significant and unavoidable are discussed in Part B.

#### **IMPACT 7.13-4: Water supply management practices that provide greater**

**Flexibility in the location, frequency, and the amount of water stored and/or borrowed at Castaic Lake and Lake Perris could potentially expose cultural and paleontological resources to damage and/or destruction.**

A prolonged drawdown at Castaic Lake and Lake Perris in the future could increase the exposed area around the perimeter of the two reservoirs that could result in risk of damage and/or destruction to cultural and paleontological resources.

**Mitigation Measure 7.13-4:** Implement Mitigation Measure 7.13-2.

Mitigation Measure 7.13-2 describes measures that lead agencies should employ to mitigate potential impacts to cultural and paleontological resources. (See Part I.B.) To mitigate Impact 7.13-4, the Department will implement the measures described in Mitigation Measure 7.13-2 for Lake Perris and Castaic Lake when reservoir levels are drawn below usual low operating levels. Implementation of this mitigation by the Department will avoid, reduce and/or minimize to a less-than-significant level potential damage and/or destruction of cultural and paleontological resources associated with a prolonged drawdown of Castaic Lake or Lake Perris attributed to the proposed project. (DEIR pages 7.13-20, 7.13-21, and 7.13-23.)

**IMPACT 10.1-20: Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially damage or destroy cultural and paleontological resources in San Luis Reservoir, Lake Oroville, Lake Perris and Plumas County.**

San Luis Reservoir and Lake Oroville: The DEIR found that changes in the amount of water stored at San Luis Reservoir and Lake Oroville attributed to the proposed project in combination with other cumulative projects would not be anticipated to have a significant effect on water surface elevations compared to normal operating levels and thus no significant environmental impact is expected to occur.

Plumas County: The DEIR found that development of watershed improvement projects in Plumas County could result in potentially significant and unavoidable impacts. These impacts in Plumas County are discussed below in Part B, Impact 10.1-20.

Lake Perris: As discussed in Impact 7.13-4, the proposed project could potentially increase the amount of exposed area around the perimeter of Lake Perris due to borrowing water which could expose cultural and paleontological resources to damage or destruction. In addition, such borrowing could further reduce reservoir water levels if implemented concurrent with the Lake Perris seismic retrofit project drawdown. If the worst-case scenario were to occur, the short-term resulting drawdown could be potentially equal to or greater than what

would have occurred in the absence of the seismic retrofit project which could temporarily contribute to a cumulative risk of damage or destruction of cultural or paleontological resources. (DEIR pages 10.1-46 and 10.47.)

**Mitigation Measure 10.1-20:** Implement Mitigation Measure 7.13-2.

The Department's implementation of the measures described in Mitigation Measure 7.13-2 will avoid, reduce and/or minimize to a less-than-significant level the proposed project's contribution to potential cumulative damage and/or destruction of cultural and paleontological resources associated with a prolonged drawdown of Lake Perris. (DEIR pages 7.13-20, 7.13-21, 10.1-47, and 10.1-48.) (Mitigation Measure 7.13-3 was inadvertently identified in the final EIR in relation to Impact 10.1-20. Mitigation Measure 7.13-3 refers to actions to be taken by KWBA on KFE property, which are not affected by Impact 10.1-20. A finding regarding implementation of Mitigation Measure 7.13-3 is found in the discussion of Impact 7.13-3 above.)

**FINDINGS:** With regard to Impact 7.13-4 and Impact 10.1-20, the Department finds that changes or alterations have been required in, or incorporated into, the proposed project which avoid or substantially lessen the significant environmental effects identified in the final EIR for these impacts.

## **PART B**

### **POTENTIALLY SIGNIFICANT IMPACTS THAT CANNOT BE REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL BY MITIGATION MEASURES INCORPORATED INTO THE PROPOSED PROJECT**

#### **1. Water Supply Management Practices – Development of Groundwater Banking Facilities in the Southern San Joaquin Valley**

Some of the proposed project's impacts result from development of groundwater banking facilities in the southern San Joaquin Valley. Prior to the Monterey Amendment, the Department approved storage of water in storage areas outside contractors' service area on a case by case basis. Article 56 of the Monterey Amendment facilitated these actions. No significant adverse impacts to any environmental resources occurred during the period 1996-2003 as a result of storage of water outside contractors' service areas. In the future, proposed project water supply management practices could encourage the development or expansion of groundwater bank facilities in the southern San Joaquin Valley (excluding the KFE). Impacts from the development of the KFE property are discussed in Impacts 7.4-3 and 7.13-3 above. Potential cumulative impacts from the KFE property are discussed below along with cumulative impacts of other groundwater banks in the southern San Joaquin Valley. In some references below, southern San Joaquin Valley is modified to specifically name Kern

County, Kings County or both. Wherever the term southern San Joaquin Valley is used below, it is intended to include Kern and Kings Counties unless otherwise noted. (Operation of storage of water in SWP facilities and outside contractors' service areas is discussed in the DEIR, pages 2-14 and 2-15, 4-7 through 4-8 and 6-53 through 6-63 and in the FEIR Subsection 15.2.4.)

**IMPACT 7.4-2: Implementation of the proposed project could potentially affect special-status terrestrial biological resources in the southern San Joaquin Valley portion of Kern County (excluding the Kern Fan Element property) resulting from construction of new groundwater storage facilities.**

In the future, even though the creation of new recharge ponds in the southern San Joaquin Valley (excluding the KFE) would periodically create open water and wetland habitat for waterfowl, the conversion of land for use as groundwater banking facilities could result in the loss of special-status terrestrial biological species and habitat in the southern San Joaquin Valley (excluding the KFE).

**Mitigation Measure 7.4-2:** Mitigation Measure 7.4-2 identifies mitigation measures that the Department proposes that a local agency adopt when reviewing any future proposal to construct new percolation ponds. The proposed mitigation measures would require that special-status species surveys be conducted prior to selection of future recharge basins in the southern San Joaquin Valley (excluding the KFE) so that identified special-status species and their habitat could be avoided. If avoidance is not possible, then consultation with the resource agencies should occur to determine appropriate mitigation, along with the preparation of appropriate CEQA documents.

Implementation of Mitigation Measure 7.4-2 by local lead agencies would reduce impacts to terrestrial biological resources from groundwater bank facilities in the southern San Joaquin Valley (excluding the KFE) to a less-than-significant level. These agencies have a legal obligation to comply with CEQA and all other applicable laws at the time any further proposed activity takes place. The Department, however, has no jurisdiction over these properties and no jurisdiction over local agency decisions. Since the Department cannot enforce implementation or monitoring of Mitigation Measure 7.4-2 for these facilities, the impact remains potentially significant and unavoidable. (DEIR page 7.4-23 and 7.4-23.)

**IMPACT 10.1-3: Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially affect special-status terrestrial biological resources in the southern San Joaquin Valley.**

As discussed in Impact 7.4-2 and Impact 7.4-3, in the future, the proposed project could potentially affect special-status terrestrial biological resources in the southern San Joaquin Valley. In addition, the proposed project, in combination

with other cumulative water development and water reallocation projects, could result in potentially significant cumulative impacts to special-status terrestrial biological resources in the southern San Joaquin Valley.

**Mitigation Measure 10.1-3:** Implement Mitigation Measures 7.4-2 and 7.4-3.

As discussed in Impact 7.4-3, the KWBA is legally required to implement Mitigation Measure 7.4-3 which outlines an avoidance protocol to further reduce the likelihood of take of any special-status species. Together, these measures and the beneficial net increase of habitat for special-status terrestrial biological resources through implementation of the KWB HCP/NCCP will avoid, reduce, and/or minimize to a less-than-significant level potentially significant impacts to special-status terrestrial biological species associated with future changes in land use and management on the KFE property attributed to the proposed project. (DEIR pages 7.4-27 through 7.4-31).

Implementation of Mitigation Measure 7.4-2 by local lead agencies would reduce impacts to terrestrial biological resources in the southern San Joaquin Valley (excluding the KFE) to a less-than-significant level. These agencies have a legal obligation to comply with CEQA and all other applicable laws at the time any further proposed activity takes place. The Department, however, has no jurisdiction over these properties and no jurisdiction over local agency decisions. Since the Department cannot enforce implementation or monitoring of Mitigation Measure 7.4-2 for these facilities, the impact remains potentially significant and unavoidable. (DEIR pages 7.4-23 and 7.4-24.) In addition, the cumulative impacts of individual activities are unknown at this time (DEIR pages 7.4-3 and 10.1-27). Therefore, the cumulative effect of Impact 10.1-3 remains potentially significant and unavoidable.

**ALTERNATIVES:** Alternatives NPA1, NPA2, CNPA3, CNPA4 and Alternative 5 would avoid Impact 7.4-2 and Impact 10.1-3 because no new outside-service-area storage would occur in the future. Although these alternatives may meet a part of one or more of the proposed project objectives, they do not meet key project objectives. Findings explaining why specific economic, legal, social, technological, or other considerations make these project alternatives infeasible are provided in Part II of these findings.

**FINDINGS:** With regard to Impact 7.4-2 and Impact 10.1-3, the Department finds that changes or alterations which avoid or substantially lessen the significant environmental effects as identified in the final EIR for these impacts are within the responsibility and jurisdiction of another public agency and not the Department. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

The Department finds that the mitigation measures adopted for Impact 7.4-2 and Impact 10.1-3 will partially mitigate those impacts; however, the residual impacts

may remain significant. With regard to Impact 7.4-2 and Impact 10.1-3, the Department finds that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR for these impacts.

**IMPACT 7.13-2: Groundwater banks developed or expanded in response to opportunities to store groundwater outside service areas under Article 56 could potentially damage or destroy cultural and paleontological resources in the southern San Joaquin Valley portion of Kern County (excluding the Kern Fan Element).**

In the future, the development or expansion of groundwater bank facilities in the southern San Joaquin Valley (excluding the KFE) could result in the damage or destruction of cultural and paleontological resources.

**Mitigation Measure 7.13-2:** Mitigation Measure 7.13-2 describes standard mitigation measures that the Department proposes a lead agency adopt when reviewing any future proposal for activities taking place where cultural or paleontological resources may occur. The proposed mitigation measures would require a lead agency to identify known or suspected archaeological or paleontological resources; analyze, protect and/or conduct scientific recovery, and evaluate any archaeological or paleontological resources that could be encountered. Carrying out these measures would ensure that important scientific information that could be provided by these resources regarding history or prehistory is not lost if such resources exist. The measures would also require a lead agency to carry out the appropriate examination, treatment and protection of any human remains consistent with State law.

With implementation of this measure by local lead agencies, impacts to cultural and paleontological resources from the development or expansion of groundwater bank facilities in the southern San Joaquin Valley (excluding the KFE) would be reduced to a less-than-significant level. These agencies have a legal obligation to comply with CEQA and all other applicable laws at the time any further proposed activity takes place. The Department, however, has no jurisdiction over these properties and no jurisdiction over local agency decisions. Since the Department cannot enforce implementation or monitoring of Mitigation Measure 7.13-2 for these facilities, the impact of the proposed project on cultural and paleontological resources resulting from outside service area storage is potentially significant and unavoidable. (DEIR page 7.13-19 to 7.13-21.)

**IMPACT 10.1-19: Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially damage or destroy cultural and paleontological resources in the southern San Joaquin Valley.**

As discussed in Impact 7.13-2 and 7.13-3, in the future, the proposed project could potentially damage or destroy cultural and paleontological resources in the southern San Joaquin Valley. In addition, implementation of the proposed project in combination with cumulative water development and reallocation projects that result in future construction of groundwater banking facilities could increase the cumulative risk of damage or destruction of known or previously unidentified cultural resources in the southern San Joaquin Valley.

**Mitigation Measure 10.1-19:** Implement Mitigation Measures 7.13-2 and 7.13-3.

As discussed in Impact 7.13-3, the KWBA is legally required to implement the measures outlined in Mitigation Measure 7.13-3 which will avoid, reduce, and/or minimize to a less-than-significant level potential damage and/or destruction of cultural and paleontological resources. (DEIR pages 7.13-21 and 7.13-22).

Implementation of Mitigation Measure 7.13-2 by local lead agencies would reduce impacts to cultural and paleontological resources from the development or expansion of groundwater banks facilities in the southern San Joaquin Valley (excluding the KFE) to a less-than-significant level. These agencies have a legal obligation to comply with CEQA and all other applicable laws at the time any further proposed activity takes place. The Department, however, has no jurisdiction over these properties and no jurisdiction over local agency decisions. Since the Department cannot enforce implementation or monitoring of Mitigation Measure 7.13-2 for these facilities, the cumulative impact of the proposed project on cultural and paleontological resources resulting from ground water banks in the southern San Joaquin Valley is potentially significant and unavoidable (DEIR pages 7.13-19 and 10.1-45.)

**ALTERNATIVES:** Alternatives NPA1, NPA2, CNPA3, CNPA4 and Alternative 5 would avoid Impact 7.13-2 and Impact 10.1-19 because no new outside-service-area storage would occur in the future. Although these alternatives may meet a part of one or more of the proposed project objectives, they do not meet key project objectives. Findings explaining why specific economic, legal, social, technological, or other considerations make these project alternatives infeasible are provided in Part II of these findings.

**FINDINGS:** For Impact 7.13-2 and Impact 10.1-19, the Department finds that changes or alterations which avoid or substantially lessen the significant environmental effects as identified in the final EIR for these impacts are within the responsibility and jurisdiction of another public agency and not the Department. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

The Department finds that the mitigation measures adopted for Impact 7.13-2 and Impact 10.1-19 will partially mitigate those impacts; however, the residual impacts may remain significant. With regard to Impact 7.13-2 and Impact 10.1-



19, the Department finds that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR for these impacts.

## **2. Water Supply Management Practices – Article 54 Flexible Storage in Castaic Lake and Lake Perris**

As discussed in Part A, Article 54 of the Monterey Amendment allows three local SWP contractors to borrow water from Castaic Lake and Lake Perris under certain conditions. The effects of borrowing water in the future on the water surface elevations of Castaic Lake and Lake Perris depend on the extent to which eligible SWP contractors make use of Article 54 as well as hydrological conditions at the time. If a prolonged drawdown occurs due to the proposed project, this could increase the exposed area around the perimeter of the two reservoirs. The worst-case condition would occur if the eligible contractors borrowed the maximum amounts of water permitted under Article 54 and the water was not replaced for the maximum permitted duration of five years. The worst-case condition is unlikely to occur because it is in the interest of the Department and the contractors that receive water from Lake Perris and Castaic Lake that those reservoirs are kept full most of the time. (The operational aspects of this action are discussed in the DEIR at pages 4-7 and 6-53 to 6-63 and in the FEIR in Subsection 15.2.5.)

### **IMPACT 7.4-5: Implementation of the proposed project could potentially affect special-status terrestrial biological resources at Lake Perris.**

In the future, under the worst-case scenario, a prolonged drawdown at Lake Perris could reduce lake levels below normal operating levels which could reduce overall fish populations. Reduced fish population could adversely affect terrestrial biological resources that use the lake to forage, including a reduction in food resources which could result in reduced nesting success for raptors, bats and waterfowl which could result in potentially significant and unavoidable impact. (DEIR pages 7.4-33 and 7.4-34.)

**Mitigation Measure:** None available.

### **IMPACT 10.1-5: Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially affect special-status terrestrial biological resources at Lake Perris.**

As discussed in Impact 7.4-5, in the future, the proposed project could potentially affect special-status terrestrial biological resources at Lake Perris due to borrowing water. In addition, such borrowing could further reduce reservoir water levels if implemented concurrent with the seismic retrofit project drawdown. If the

worst-case scenario were to occur, the short-term resulting drawdown could be potentially equal to or greater than what would have occurred in the absence of the Lake Perris seismic retrofit project which could temporarily contribute to a cumulative reduction in food resources and reduced nesting success for raptors, bats and waterfowl that use the lake to forage and could result in a short term potentially significant and unavoidable cumulative impact. (DEIR pages 7.4-33, 7.4-34, and 10.1-29.)

**Mitigation Measure:** None available.

**ALTERNATIVES:** The only way to minimize Impact 7.4-5 and Impact 10.1-5 is to not allow maximum drawdown of Lake Perris under Article 54 which alternative was evaluated and rejected as part of the alternatives analysis (see Part II). Therefore, there are no feasible changes or alterations that can be incorporated into the proposed project which would avoid or substantially lessen Impact 7.4-5 and Impact 10.1-5 and these impacts remain potentially significant and unavoidable.

Alternatives NPA1, NPA2, CNPA3, CNPA4 and Alternative 5 would avoid Impact 7.4-5 and Impact 10.1-5 because Article 54, which is part of the water supply management practices, would not be implemented in the future under these alternatives. Although these alternatives may meet a part of one or more of the proposed project objectives, they do not meet key project objectives. Findings explaining why specific economic, legal, social, technological, or other considerations make these project alternatives infeasible are provided in Part II of these findings.

**FINDINGS:** With regard to Impact 7.4-5 and Impact 10.1-5, the Department finds that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR for these impacts.

**IMPACT 7.4-6: Implementation of the proposed project could potentially affect riparian habitat and the special-status terrestrial species it supports at Lake Perris.**

In the future, under the worst-case scenario, a prolonged drawdown at Lake Perris could reduce lake levels below normal operating levels which could result in the reduction of riparian vegetation on the east end of the reservoir, which could adversely impact special-status terrestrial species which utilize such habitat for food, shelter and nesting. (DEIR pages 7.4-34 and 7.4-35.)

**Mitigation Measure 7.4-6:** Mitigation Measure 7.4-6 requires development of baseline studies to determine what water source is maintaining the riparian habitat. In addition, a qualified biologist shall conduct a complete habitat

assessment of the riparian habitat and the species supported by it and a certified arborist shall evaluate the health of the trees. Once the baseline is established, annual monitoring shall document changes in the health of the habitat and species. If a prolonged drawdown (longer than one year) occurs, an irrigation system, with monthly monitoring, shall be installed, maintained and operated to support the riparian habitat assuming the irrigation system installed for the seismic repairs is successful in maintaining riparian vegetation. (DEIR page 7.4-35.)

Implementation of Mitigation Measure 7.4-6 by the Department will reduce the impact to riparian habitat and the special-status species supported by that habitat at Lake Perris in the event of a prolonged drawdown by providing a supplemental water source. However, because of the complexity of the system, it is unknown at this time what the real impacts on riparian habitat will be. Therefore, the residual impact cannot be assessed and remains potentially significant and unavoidable. (DEIR page 7.4-35.)

**IMPACT 10.1-6: Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially affect riparian habitat and the special-status terrestrial species it supports at Lake Perris.**

As discussed in Impact 7.4-6, in the future, the proposed project could potentially affect riparian habitat and the special-status terrestrial species it supports at Lake Perris due to borrowing water. In addition, such borrowing could further reduce reservoir water levels if implemented concurrent with the seismic retrofit project drawdown. If the worst-case scenario were to occur, the short-term resulting drawdown could be potentially equal to or greater than what would have occurred in the absence of the Lake Perris seismic retrofit project which could temporarily contribute to a cumulative decline in the riparian habitat and the special-status terrestrial species it supports. (DEIR pages 10.1-29 to 10.1-30.)

**Mitigation Measure 10.1-6: Implement Mitigation Measure 7.4-6.**

Implementation of Mitigation Measure 7.4-6 would reduce the proposed project's adverse impacts to riparian habitat and the special-status species supported by that habitat at Lake Perris in the event of a prolonged drawdown by providing a supplemental water source. However, because of the complexity of the system, it is unknown at this time what the real impacts on riparian habitat will be. Therefore, the residual impact cannot be assessed and the cumulative impact remains potentially significant and unavoidable. (DEIR pages 7.4-35 and 10.1-30.)

**ALTERNATIVES:** Alternatives NPA1, NPA2, CNPA3, CNPA4 and Alternative 5 would avoid Impact 7.4-6 and Impact 10.1-6 because Article 54, which is part of the water supply management practices, would not be implemented in the future

under these alternatives. Although these alternatives may meet a part of one or more of the proposed project objectives, they do not meet key project objectives. Findings explaining why specific economic, legal, social, technological, or other considerations make these project alternatives infeasible are provided in Part II of these findings.

**FINDINGS:** The Department finds that the mitigation measures adopted for Impact 7.4-6 and Impact 10.1-6 will partially mitigate those impacts; however, the residual impacts may remain significant. With regard to Impact 7.4-6 and Impact 10.1-6, the Department finds that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR for these impacts.

**IMPACT 7.5-4: Implementation of the proposed project could affect visual resources at Castaic Lake and Lake Perris.**

In the future, under the worst-case scenario, a significant drawdown at either Castaic Lake or Lake Perris could expose a wide band of barren soil and silt that is below normal operating lake levels or that occurs more often than would occur without the project. This could increase the exposed area around the perimeter of the two reservoirs, diminishing the natural lake appearance. Although the visual effects of drawdown would be temporary (up to five years), the impact is potentially significant and unavoidable. (DEIR pages 7.5-14 to 7.5-15, FEIR Subsection 7.4.2.)

**Mitigation Measure:** None available.

**IMPACT 10.1-8: Implementation of the proposed project in combination with the Lake Perris Seismic Retrofit Project could potentially affect visual resources at Lake Perris.**

As discussed in Impact 7.5-4, in the future, the proposed project could potentially affect visual resources at Lake Perris due to borrowing water. In addition, such borrowing could further reduce reservoir water levels if implemented concurrent with the seismic retrofit project drawdown. If the worst-case scenario were to occur, the short-term resulting drawdown could be potentially equal to or greater than what would have occurred in the absence of the seismic retrofit project which could temporarily contribute to a cumulative adverse visual impact and result in a short-term potentially significant and unavoidable cumulative impact. (DEIR page 10.1-32.)

**Mitigation Measure:** None available.

**ALTERNATIVES:** The only way to minimize Impact 7.5-4 and Impact 10.1-8 is to not allow maximum drawdown of Lake Perris under Article 54 which alternative

was evaluated and rejected as part of the alternatives analysis (see Part II). Therefore, there are no feasible changes or alterations that can be incorporated into the proposed project which would avoid or substantially lessen Impact 7.4-5 and Impact 10.1-5 and these impacts remain potentially significant and unavoidable.

Alternatives NPA1, NPA2, CNPA3, CNPA4 and Alternative 5 would avoid Impact 7.5-4 and Impact 10.1-8 because Article 54, which is part of the water supply management practices, would not be implemented in the future under these alternatives. Although these alternatives may meet a part of one or more of the proposed project objectives, they do not meet key project objectives. Findings explaining why specific economic, legal, social, technological, or other considerations make these project alternatives infeasible are provided in Part II of these findings.

**FINDINGS:** With regard to Impact 7.5-4 and Impact 10.1-8, the Department finds that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR for these impacts.

**IMPACT 7.7-6: Fluctuation in water surface elevations at Castaic Lake and Lake Perris as a result of flexible storage and extended carryover practices could potentially alter the amount of shoreline exposed to wind erosion, which could generate wind-blown particulate emissions.**

Soils at Castaic Lake are characterized as clays which are subject to limited wind and/or water erosion potential. Therefore, based on soil characteristics, impacts to air quality from drawdown of Castaic Lake would be less than significant in the future. However, in the future, under the worst-case scenario, a significant drawdown at Lake Perris could expose a wide band of barren soil and silt that is below normal operating lake levels which could increase the exposed area around the perimeter of the lake, increasing the potential for wind-borne particulate emissions and resulting in a potentially significant and unavoidable impact. (DEIR pages 7.7-14 to 7.7-15, FEIR Subsection 7.5.2.)

**Mitigation Measure:** None available.

**IMPACT 10.1-11: Implementation of the proposed project in combination with the Lake Perris Seismic Retrofit Project could potentially alter the amount of shoreline exposed to wind erosion, which could generate wind-blown particulate emissions.**

As discussed in Impact 7.7-6, in the future, the proposed project could potentially alter the amount of Lake Perris shoreline exposed to wind erosion due to borrowing water, which could generate wind-blown particulate emissions. In

addition, such borrowing could further reduce reservoir water levels if implemented concurrent with the seismic retrofit project drawdown. If the worst-case scenario were to occur, the short-term resulting drawdown could be potentially equal to or greater than what would have occurred in the absence of the seismic retrofit project which could temporarily contribute to a cumulative increase in wind-borne particulate emissions and result in a short-term potentially significant and unavoidable cumulative impact. (DEIR pages 10.1-35 to 10.1-36.)

**Mitigation Measure:** None available.

**IMPACT 7.8-4: Implementation of the proposed project could potentially affect rates of erosion at Castaic Lake and Lake Perris.**

Soils at Castaic Lake are characterized as clays which are subject to limited wind and/or water erosion potential. Therefore, based on soil characteristics, impacts to soil erosion from drawdown of Castaic Lake would be less than significant in the future. However, in the future, under the worst-case scenario, a significant drawdown at Lake Perris could expose a wide band of barren soil and silt that is below normal operating lake levels which could increase the exposed area around the perimeter of the lake, increasing the potential for wind and rain erosion and resulting in a potential significant and unavoidable impact. (DEIR pages 7.8-10 and 7.8-11 and FEIR Subsection 7.6.2.)

**Mitigation Measure:** None available.

**IMPACT 10.1-13: Implementation of the proposed project in combination with the Lake Perris Seismic Retrofit Project could potentially increase rates of soil erosion.**

As discussed in Impact 7.8-4, in the future, the proposed project could potentially increase rates of soil erosion at Lake Perris due to borrowing water. In addition, such borrowing could further reduce reservoir water levels if implemented concurrent with the seismic retrofit project drawdown. If the worst-case scenario were to occur, the short-term resulting drawdown could be potentially equal to or greater than what would have occurred in the absence of the seismic retrofit project which could temporarily contribute to a cumulative increase in soil erosion and result in short-term potentially significant and unavoidable cumulative impact. (DEIR page 10.1-38.)

**Mitigation Measure:** None available.

**ALTERNATIVES:** There are no feasible changes or alterations that can be incorporated into the proposed project which would avoid or substantially lessen Impact 7.7-6, Impact 7.8-4, Impact 10.1-11 and Impact 10.1-13. Implementation of mitigation measures such as hydroseeding or landscaping to reduce all impacts at Castaic Lake and Lake Perris are economically and physically

infeasible because of the scale of the area to be covered at either reservoir and therefore the impact of the proposed project on wind-blown particulate emissions and on soil erosion is potentially significant and unavoidable. (DEIR pages 7.5-15, 7.8-11, 10-1-32, 10.1-36 and 10.1-38.)

Alternatives NPA1, NPA2, CNPA3, CNPA4 and Alternative 5 would avoid Impact 7.7-6, Impact 7.8-4, Impact 10.1-11, and Impact 10.1-13, because Article 54, which is part of the water supply management practices, would not be implemented in the future under these alternatives. Although these alternatives may meet a part of one or more of the proposed project objectives, they do not meet key project objectives. Findings explaining why specific economic, legal, social, technological, or other considerations make these project alternatives infeasible are provided in Part II of these findings.

**FINDINGS:** With regard to Impact 7.7-6, Impact 7.8-4, Impact 10.1-11, and Impact 10.1-13, the Department finds that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR for these impacts.

**IMPACT 7.9-1: Implementation of the proposed project could potentially affect recreational resources at Castaic Lake and Lake Perris.**

In the future, under the worst-case scenario, a significant drawdown at Castaic Lake and/or Lake Perris could decrease water levels which could adversely impact recreational activities including boating, fishing, water skiing, and swimming. In addition, the use of disabled access facilities might be limited. (DEIR pages 7.9-13 to 7.9-17 and FEIR Subsection 7.7.2.).

**Mitigation Measure 7.9-1:** The Department shall notify the public at the onset of the loss of recreational resources due to Article 54 drawdown at Lake Perris and Castaic Lake until the withdrawal is repaid. In addition, to the extent feasible, the Department shall install, extend, or upgrade existing facilities to allow safe access to lower lake levels during multi-year drawdown. The Department shall also monitor water quality during drawdown periods, including for potential full-body contact hazards, and prepare and provide funding for a management plan to control invasive plant species that could expand into recreational areas during extended drawdown periods.

Implementation of Mitigation Measure 7.9-1 would reduce impacts to recreational activities and access attributed to Article 54 extended drawdown; however, these measures would not guarantee the restoration of recreational opportunities. Therefore, the impact of the proposed project with regard to recreation would remain potentially significant and unavoidable. (DEIR page 7.9-15.)

**IMPACT 10.1-15: Implementation of the proposed project in combination**

**with the Lake Perris Seismic Retrofit Project could potentially affect recreational resources at Lake Perris.**

As discussed in Impact 7.9-1, in the future, the proposed project could potentially affect recreational resources at Lake Perris due to borrowing water. In addition, such borrowing could further reduce reservoir water levels if implemented concurrent with the seismic retrofit project drawdown. If the worst-case scenario were to occur, the short-term resulting drawdown could be potentially equal to or greater than what would have occurred in the absence of the seismic retrofit project which could temporarily contribute to a cumulative reduction in recreational opportunities.

**Mitigation Measure 10.1-15:** Implement Mitigation Measure 7.9-1. Mitigation Measure 7.9-1 would reduce impacts to recreational activities and access attributed to Article 54 extended drawdowns; however, these measures would not guarantee the restoration of recreational opportunities and therefore the short term cumulative impact of the proposed project on recreation remains potentially significant and unavoidable. (DEIR pages 7.9-15 and 10.1-40.)

**ALTERNATIVES:** Alternatives NPA1, NPA2, CNPA3, CNPA4 and Alternative 5 would avoid Impact 7.9-1 and Impact 10.1-15 because Article 54, which is part of the water supply management practices, would not be implemented in the future under these alternatives. Although these alternatives may meet a part of one or more of the proposed project objectives, they do not meet key project objectives. Findings explaining why specific economic, legal, social, technological, or other considerations make these project alternatives infeasible are provided in Part II of these findings.

**FINDINGS:** The Department finds that the mitigation measures adopted for Impact 7.9-1 and Impact 10.1-15 will partially mitigate those impacts; however, the residual impacts may remain significant. With regard to Impact 7.9-1 and Impact 10.1-15, the Department finds that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR for these impacts.

### **3. Plumas County Watershed Improvement Projects**

Pursuant to the Settlement Agreement, the Department has provided funding and may provide additional funding to Plumas County FC&WCD, primarily for watershed improvements for the mutual benefit of Plumas and the SWP in the Feather River watershed, and for other district-related purposes. No significant adverse impacts to any environmental resources occurred during the period 1996-2003 as a result of watershed improvement projects in Plumas County because the Settlement Agreement was not completed until after this period. (DEIR page 4-12.)



**IMPACT 7.13-6: Implementation of the proposed project and its alternatives could result in potential damage and/or destruction of cultural and paleontological resources in Plumas County as a result of watershed improvement projects.**

Although the number and size of the future watershed improvement projects in Plumas County that would result from proposed project implementation are expected to be relatively small, their implementation could nevertheless result in the potential to damage or destroy cultural and paleontological resources.

**Mitigation Measure 7.13-6:** Mitigation Measure 7.13-6 requires implementation of Mitigation Measure 7.13-2. Mitigation Measure 7.13-2 describes standard mitigation measures that the Department proposes a lead agency adopt when reviewing any future proposal for activities taking place where cultural or paleontological resources may occur. The proposed mitigation measures would require the implementation of measures to identify known or suspected archaeological or paleontological resources and then to analyze, protect and/or conduct scientific recovery and evaluation of any archaeological or paleontological resources that could be encountered. Carrying out these measures would ensure that important scientific information that could be provided by these resources regarding history or prehistory is not lost. The measures also require a lead agency to carry out the appropriate examination, treatment and protection of any human remains consistent with State law.

With implementation of this measure by local lead agencies, impacts to cultural and paleontological resources in Plumas County from future watershed improvement projects would be reduced to a less-than-significant level. These agencies have a legal obligation to comply with CEQA and all other applicable laws at the time any further proposed activity takes place. The Department, however, has no jurisdiction over these properties and no jurisdiction over local agency decisions. Since the Department cannot enforce implementation or monitoring of Mitigation Measure 7.13-2, the impact of the proposed project on cultural and paleontological resources resulting from watershed improvement projects in Plumas County is potentially significant and unavoidable. (DEIR pages 7.13-25 and 7.13-26.)

**10.1-20: Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially damage or destroy cultural and paleontological resources in Plumas County.**

As discussed in Impact 7.13-6, the proposed project could potentially damage or destroy cultural and paleontological resources in Plumas County. In addition, construction of watershed improvement projects in Plumas County attributed to

the proposed project would contribute to cumulative ground disturbance activities that could expose cultural and paleontological resources. (DEIR page 10.1-47.)

Therefore, the proposed project would contribute to the cumulative risk of damage or destruction of known or previously unidentified cultural and paleontological resources in Plumas County and result in a potentially significant cumulative impact on such resources.

**Mitigation Measure 10.1-20:** Implement Mitigation Measure 7.13-2. With implementation of Mitigation Measure 10.1-20 (i.e., Mitigation Measure 7.13-2) by local lead agencies, impacts to cultural and paleontological resources from watershed improvement projects in Plumas County would be reduced to a less-than-significant level. These agencies have a legal obligation to comply with CEQA and all other applicable laws at the time any further proposed activity takes place. The Department, however, has no jurisdiction over these properties and no jurisdiction over local agency decisions. Since the Department cannot enforce implementation or monitoring of Mitigation Measure 7.13-2, the cumulative impact of the proposed project on cultural and paleontological resources resulting from watershed improvement projects in Plumas County is potentially significant and unavoidable. (DEIR pages 10.1-47, and 10.1-48.)

**ALTERNATIVES:** Alternatives NPA1, NPA2, CNPA3, and CNPA4 would avoid Impact 7.13-6 and Impact 10.1-20 because the Settlement Agreement would not be implemented in the future. Alternative 5 would result in the same impact in the future when compared to the proposed project because the Settlement Agreement which includes the Plumas County watershed projects would be implemented in the same way as in the proposed project. Although these alternatives may meet a part of one or more of the proposed project objectives, they do not meet key project objectives. Findings explaining why specific economic, legal, social, technological, or other considerations make these project alternatives infeasible are provided in Part II of these findings.

**FINDINGS:** With regard to Impact 7.13-6 and Impact 10.1-20, the Department finds that changes or alterations which avoid or substantially lessen the significant environmental effect as identified in the final EIR for these impacts are within the responsibility and jurisdiction of another public agency and not the Department. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

With regard to Impact 7.13-6 and Impact 10.1-20, the Department finds that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR for Impact 7.13-6 and Impact 10.1-20.

#### 4. Growth-Inducing Impacts

The EIR does not assume that growth inducement is necessarily beneficial, detrimental or of little significance to the environment. The potential impacts and available mitigation measures that could arise from growth-inducement are discussed in Chapters 8 of the DEIR and FEIR. The DEIR's programmatic analysis, supplemented by additional analysis in the FEIR, examined Monterey Amendment measures to determine which ones might have growth-inducing impacts, and the conditions under which they could result in potential impacts. Overall M&I water supplies were reduced as a result of altered allocation procedures. However, M&I users taking advantage of permanent transfers of Table A amounts and the water supply management practice of using out-of-service-area storage could receive an increase in either average annual deliveries or dry year supply increases or both.

The final EIR estimated that the maximum potential added population that could be supported in 2030 as a result of the proposed project is between 575,000 and 750,000 persons depending on future water demand scenarios. Increases in population can lead to increased development which can have potential adverse environmental impacts. These estimates assume that all of the additional water received by the identified M&I contractors would be used to support population growth. However, this assumption is not likely to occur given past and current contractor practices. Therefore, these estimates likely overestimate the potential added population. (DEIR Section 8.2 and FEIR Subsection 8.2.)

**Impacts and Mitigation Measures:** The final EIR concluded that the Department does not have authority or control over local planning decisions and that local decision-making agencies are the appropriate entities to make CEQA evaluations at the local level. The Department does not have the authority to control land use decisions involving private activities or to oversee land use regulation by cities and counties. (DEIR Section 8.3 and FEIR Subsection 8.2.2.2.)

However, the final EIR identified, in general terms, potential impacts and mitigation measures that could result from local development decisions to accommodate population increases. The types of impacts and mitigation measures are common to urban development projects. Such impacts include conversion of agricultural and wildlife habitat areas to urban uses, altered landform and drainage patterns, increased storm runoff, decrease in groundwater recharge, increased use of hazardous materials and increased traffic, noise levels, air pollution emissions, generation of sanitary waste water and solid waste and demand for local services. Mitigation measures include locating the growth in areas where sensitive resources are absent, minimizing the loss of resources, or replacing the loss. In addition federal, State and local governments implement numerous mitigation strategies for specific project impacts such as best management practices to minimize water quality and air emission impacts.

Depending on the particular project and the mitigation measures adopted, some of these impacts may be potentially significant and unavoidable. (DEIR Section 8.2.2 and FEIR Subsection 8.2.2.1.)

The final EIR concluded that the level of detail contained in the DEIR for growth-inducing impacts and reliability analyses is consistent with the general level of review required for this proposed project and that any potential specific impacts resulting from local development that may be induced by this project were too speculative to be meaningfully evaluated in this EIR. The potential environmental impact of growth is subject to more detailed environmental review by local decision-makers at the project level when development projects are brought forward. Project-level EIRs prepared by local decision-makers are subject to their independent analysis and determinations. (DEIR Section 8.3 and FEIR Subsection 8.2.2.2.)

**ALTERNATIVES:** Alternatives NPA1, CNPA3, and CNPA4 would avoid these potential growth-inducing impacts because they do not include implementation of the proposed project. Alternative 5 would result in a smaller impact when compared to the proposed project because the water supply management practices (which are not part of Alternative 5) contribute to the potential growth. NPA2 would increase growth to the extent that the increased growth was a result of actions of the proposed project prior to 2003. Although these alternatives may meet a part of one or more of the proposed project objectives, they do not meet most of the key project objectives. Findings explaining why specific economic, legal, social, technological, or other considerations make these project alternatives infeasible are provided in Part II of these findings.

**FINDINGS:** With regard to potential growth-inducing impacts, the Department finds that changes or alterations which avoid or substantially lessen the significant environmental effect as identified in the final EIR with regard to these impacts are within the responsibility and jurisdiction of another public agency and not the Department. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

With regard to potential growth-inducing impacts, the Department finds that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR for these impacts.

## PART II FINDINGS REGARDING ALTERNATIVES TO THE PROJECT

CEQA *Guidelines* Section 15126.6 states:

- (a) Alternatives to the Proposed Project: An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives....

In addition, CEQA *Guidelines* Subsection 15091(a) (3) states that one of the findings an agency can make regarding significant environmental effects identified in the final EIR is that “[S]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR”. Subsections 15091(c) and (d) state that a finding made pursuant to subsection 15091(a)(3) must be supported by substantial evidence and the finding shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

The findings in Part I.B identified those impacts that are potentially significant and unavoidable even after the implementation of feasible mitigation measures. The reasons for rejecting identified mitigation measures as infeasible are discussed under each Impact heading in Section I.B. For certain impacts, those findings identified alternatives that could reduce the impacts to a less-than-significant level, but found that the alternatives were not feasible because they did not meet key project objectives. This section provides additional detail and findings supporting those findings.

**Proposed Project:** The proposed project is the Monterey Amendment and the Settlement Agreement. (DEIR Sections 4.4 and 4.5.)

The Monterey Amendment has a number of provisions, including:

- changes in the procedures for allocation of Table A water and surplus water among the SWP contractors;
- permanent transfers of 130,000 acre feet and retirement of 45,000 acre feet of SWP long-term water supply contracts’ Table A amounts;
- transfer of the Kern Fan Element property; and
- restructured rates.

The Settlement Agreement has a number of provisions, including:

- establishing a process for involving plaintiffs and SWP contractors in development of a new EIR;

- better communication of SWP water reliability information;
- greater public review of major SWP actions;
- recognition of certain permanent Table A transfers;
- assurances regarding Kern Fan Element Lands;
- funding to Plumas County for watershed restoration and other purposes;
- changes to Plumas County's long-term water supply contract; and
- funding to plaintiffs for multiple purposes, including watershed restoration.

**Project Objectives:** The overall objective of the proposed project is to resolve the underlying issues that led to the Monterey Amendment and to implement the Settlement Agreement. (DEIR Section 4.3.)

The fundamental purpose of the Monterey Amendment is to resolve conflicts and disputes between and among the urban and agricultural SWP contractors and the Department about water allocation and related issues pertaining to the management and financing of the SWP. (FEIR Subsection 5.2.1.2.) The DEIR identified five specific objectives of the Monterey Amendment. (DEIR Section 4.3.1.) These are:

- (i) restructuring and clarifying procedures for SWP water allocation and delivery during times of shortage and surplus;
- (ii) reducing financial pressures on agricultural contractors in times of drought and supply shortages;
- (iii) adjusting the financial rate structure of the SWP to more closely match revenue needs;
- (iv) facilitating water management practices and water transfers that improve reliability and flexibility of SWP water supplies in conjunction with local supplies; and
- (v) resolving legal and institutional issues related to storage of SWP water in Kern County groundwater basins and in other areas.

The DEIR identified five specific objectives of the Settlement Agreement. (DEIR Section 4.3.2.) These are:

- (i) to communicate SWP supply reliability information to SWP contractors and local planning jurisdictions and clarify related SWP contract language;
- (ii) enhance public review of SWP contract amendments and public participation in environmental review;
- (iii) provide assurances regarding finality of certain Table A transfers and transfer of title to Kern Fan Element lands and assurances regarding environmental protection of Kern Fan Element lands;
- (iv) increase SWP watershed enhancement activities in Plumas County and improve Plumas County's access to SWP water; and
- (v) provide funding to plaintiffs to implement the Settlement Agreement including watershed restoration projects.

**Alternatives and Feasibility:** CEQA *Guidelines* Section 15126.6 provides that an EIR must describe a range of alternatives to the proposed project which could reasonably attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant impacts of the proposed project. The EIR considered four versions of a no project alternative (NPA1, NPA2, CNPA3 and CNPA4) and a fifth alternative (Alternative 5). Additionally, a number of other potential alternatives suggested by comments were considered for analysis in the EIR and rejected.

The findings below explain why some potential alternatives were not included in the EIR for discussion, and why the alternatives analyzed in the EIR are in fact infeasible. The alternatives were rejected as being infeasible for a number of reasons, including that they do not meet some or all of the key project objectives, which are essential to the success of the proposed project in achieving the underlying fundamental purpose of the proposed project. They are therefore undesirable from a policy standpoint based on a reasonable balancing of economic, legal, social, technological and other considerations.

The Department again discusses similar considerations in balancing the benefits of the proposed project against its unavoidable environmental risks in its Statement of Overriding Considerations (Exhibit C). At this stage, CEQA *Guidelines* Subsection 15093(a) provides that if the specific economic, legal, social, technological or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable'.

**FINDINGS AND CONCLUSIONS:** The Department makes the following findings and determinations with regard to alternatives to the proposed project:

**Scope of EIR:**

The proposed project and objectives in the EIR are substantially the same as the proposed project and objectives in CCWA's prior EIR on the Monterey Agreement with some changes brought about by the Settlement Agreement. Some of the comments received on the DEIR related to issues that concern operation of the SWP as a whole or issues outside of SWP operations, including stresses facing the Delta and issues relating to growth and water reliability.

The final EIR recognized that there were significant concerns regarding operation of the SWP as a whole, stresses facing the Delta, and issues relating to growth and water reliability. To the extent that these issues affect or could be affected by the Monterey Amendment and the Settlement Agreement, they are discussed in the final EIR. The primary focus of the Monterey Amendment is on how the Department will allocate SWP water and how the contractors may be able to increase the flexibility

and reliability of the available SWP water. The Monterey Amendment cannot and does not change hydrologic conditions or regulatory requirements in effect at the time of export, and it does not increase Delta exports beyond permitted limits. (DEIR Sections 6.2 and 6.3 and FEIR Subsections 5.1.2.)

The Department concluded that the Monterey Amendment is not an appropriate tool for implementing changes to attempt to solve broad issues relating to the SWP, protection of the Delta, or water reliability planning in general. There are other established planning, administrative, legislative and regulatory efforts underway that will address these broader concerns in more effective ways and as part of comprehensive statewide processes. The Department is involved in all these processes and is working with the Legislature, the Governor's office and other State and local government forums and the public to deal with such issues. (DEIR Chapter 11, FEIR, Subsections 5.2.1.1, 5.2.1.2, 5.2.3.1, and 5.2.3.2.)

**Alternatives proposed in comments considered and rejected:**

Consistent with the requirements of CEQA, the Department used the following factors as screening criteria to determine whether to consider a candidate alternative in detail in the alternatives analysis in the EIR: it must meet most of the basic objectives of the proposed project; avoid or lessen the proposed project's significant adverse environmental impacts; and be feasible and implementable in a reasonable period of time. The Department considered and rejected a number of alternatives for inclusion in the EIR for further analysis because they did not meet one or more of the screening criteria.

Some comments stated that the DEIR should have considered a broader range of alternatives, including increased conservation, recycling and other local water system enhancements; Department-mandated best management practices to reduce urban demand for water; reduced diversions or exports from the Delta; and allocation of water for Delta and fisheries benefits. The DEIR considered these proposed alternatives, but concluded that the Monterey Amendment was not an appropriate tool for mandating or implementing these types of changes. These suggested changes were rejected as alternatives because they did not meet screening criteria, including achieving most, if any, of project objectives. They are not alternatives to the proposed project, but rather different projects with different objectives designed to address issues related to operation of the SWP as a whole or to address issues only tangentially (or not at all) related to the SWP or the Monterey Amendment.

**No project alternatives (NPA1, NPA2, CNPA3, and CNPA4):**



The no project alternative was defined as the continued operation of the SWP in accordance with the un-amended long-term water supply contracts (pre-Monterey Amendment). The SWP has been operated since 1996 pursuant to long-term water supply contracts that include the Monterey Amendment. Four versions of the no project alternative are examined in the DEIR because there is room for disagreement over how to characterize continued operation of the SWP in accordance with the pre-Monterey long-term water supply contracts. These alternatives are described on pages 11-1 and 11-2 of the DEIR and include two versions that involve invocation of Article 18(b) as required by the court in *PCL v. DWR*.

Three of the no project alternatives (NPA1, CNPA3, and CNPA 4) show different possibilities of what might have happened if the Monterey Amendment had not been implemented in 1996. NPA1, CNPA3, and CNPA4 all assume that none of the elements of the proposed project would ever have been implemented (although they all include a state-owned but locally operated groundwater storage bank) and examine the impacts of each alternative under those assumptions from 1996 through 2020. NPA2 analyzes the results of a no project alternative starting from the present, which for purposes of the analysis was fixed at 2003 (the time of the Notice of Preparation). NPA2 therefore assumes that actions completed under the Monterey Amendment from 1996 through 2003 would remain unchanged. NPA2's analysis of the time period 2003 through 2020 leaves in place the transfer of the KFE property as well as pre-2003 Monterey Amendment transfers of Table A amounts and storage outside contractors' service areas in programs in place in 2003.

All of the no project alternatives might meet a part of one or more of the project objectives. NPA1, CNPA3 and CNPA4 all include a state-owned but locally operated groundwater storage bank on the KFE property which might help facilitate water management practices and water transfers that improve reliability and flexibility of SWP supplies in conjunction with local supplies. However, as discussed in FEIR Subsection, 16.2.1 and 16.2.2, uncertainties regarding State use of the KFE property as a groundwater facility ultimately convinced the Department in 1993 to halt feasibility and design work on the project. These uncertainties included proposed revisions of environmental and water quality standards and difficulties in obtaining required local agency approval for development of a State groundwater bank. In addition, these three alternatives would not achieve any of the other objectives of the proposed project. NPA2 includes all the Monterey Amendment actions that took place between 1995 and 2003, but would not include any future actions. Thus, NPA2 would have met all of the objectives of the proposed project in the past and would continue to meet some of those objectives in the future for those actions that would continue. It would not meet any of the objectives with regard to the

discontinued actions. This means that flexible storage in Castaic Lake and Lake Perris, extended storage in San Luis Reservoir and the turnback pool would be discontinued. No new or expanded out-of-service area storage programs and no new Monterey Amendment Table A transfers would take place. Water would be allocated in accordance with pre-Monterey Amendment rules and the Settlement Agreement would not take place. Although each of the four no project alternatives would reduce some or all of the potentially significant impacts to a less-than-significant level, the Department finds that none of these alternatives would meet the key project objectives which are essential to the success of the project in achieving the underlying fundamental purpose of the Monterey Amendment, which is to resolve conflicts and disputes between and among the urban and agricultural SWP contractors and the Department about water allocation and related issues pertaining to the management and financing of the SWP. In addition, the no project alternatives would not meet any of the objectives of the Settlement Agreement. Therefore, each of the no project alternatives is rejected as being infeasible for economic, legal, social, technological or other reasons. (DEIR Sections 11.1.1, 11.4 and 11.7 and FEIR Subsections 11.2.1, 11.2.2 and 11.2.3.)

#### **Invocation of Article 18(b) in CNPA3 and CNPA4**

The court in *PCL v. DWR* found that the EIR on the Monterey Agreement was inadequate because it failed to analyze invocation of Article 18(b) of the pre-Monterey contracts as a no-project alternative. Some comments on the DEIR suggest that the Department could have invoked Article 18(b) and interpreted Article 21(g)(1) in a way that would have limited or precluded Article 21 deliveries. They stated that this invocation would result in reduced exports that would reduce reliance on SWP water for development purposes, and thus result in less growth and more water for in-Delta uses.

Invocation of Article 18(b) is not part of the proposed project; it is however part of two no project alternatives (CNPA3 and CNPA4). The Department finds that invocation of Article 18(b) would not result in more water remaining in the Delta to become outflow. As stated in the DEIR on page 2-16, the invocation of Article 18(b) would not have altered the amount of water that the Department exported and delivered to the contractors in the many years when more than the minimum SWP yield was available in the SWP system. Instead, the additional water in excess of the reduced Table A deliveries would have been delivered to the contractors under Article 21. The difference between CNPA3 and CNPA4 is how the Article 21 water would have been allocated. (FEIR Subsection 13.2.2 on the invocation of Article 18(b).)

During the preparation of the DEIR, the Department reviewed various ways to invoke Article 18(b) including invocation of Article 18(b) with no delivery of Article 21 water to SWP contractors. The invocation of Article 18(b) without Article 21 deliveries was not considered in detail in the DEIR because the Department concluded that it would not meet any of the objectives of the Monterey Amendment and because it would be in conflict with material terms of the long-term water supply contracts. (See discussion on pages 11-5 and 11-6 in the DEIR.) The Department also determined, after considerable discussion, that it would not have invoked Article 18(b) in this manner at any time in the past, nor into the near-term future. However, in response to comments, the Department developed an analysis of the effects of operating the SWP with Article 18(b) invoked and with limited or no Article 21 water delivered to SWP contractors. Although the Department believes that Article 18(b) would not have been invoked in this way, nevertheless, this analysis provides additional information to the public and to decision-makers on the effects of not delivering water to SWP contractors that would otherwise be available under Article 21. This analysis is not presented as an alternative or as a modification of any alternatives discussed in the DEIR, but as clarification of why the Department rejected the approach as an alternative. (See FEIR Subsection 9.2.5.3.)

### **Alternative 5**

The Department finds that Alternative 5 is not a feasible alternative for several reasons. First, it does not meet several key project objectives. Alternative 5 deletes Articles 54, 55 and 56 from the Monterey Amendment, which would eliminate all of the provisions of the water supply management practices and consequently would eliminate all of the potentially significant unavoidable impacts of the proposed project except for the Plumas County impacts. It would remove provisions relating to flexible storage provisions at Castaic Lake and Lake Perris, storage in SWP facilities and outside contractors' service areas, the Turnback Pool and transport of non-SWP water. These provisions provide more consistency and greater flexibility in SWP contractors' use of existing SWP storage and conveyance facilities and promote groundwater banking, conjunctive use of local and SWP water sources and earlier and more efficient use of excess allocated Table A water. Eliminating these provisions significantly diminishes the ability of the project to meet two key objectives – (1) to facilitate water management practices and water transfers that improve reliability and flexibility of SWP water supplies in conjunction with local supplies, and (2) to resolve legal and institutional issues related to storage of SWP water in Kern County groundwater basins and in other areas.

Alternative 5 is also undesirable based on other policy considerations. The Monterey Amendment resulted from a balance of negotiated gains and concessions among the contractors and the Department that required achieving all of the objectives of the Monterey Amendment in order to settle significant disputes among the contractors and the Department. Both agricultural and M&I contractors gave up rights or benefits to make the Monterey Agreement work. Both had to also gain new rights or benefits or there would have been no reason for them to enter into the Monterey Agreement. Further, there were significant competing interests within the agricultural and urban camps that required additional balancing. The reasons for signing the Monterey Agreement may have been different for each contractor, but each one had to believe that it would benefit from the changes as a whole. Eliminating the water supply management practices would change the balance of benefits for some of the contractors. In approving the Monterey Agreement, the M&I contractors accepted the removal of the provision in the long-term water supply contracts that required that agricultural contractors be subject to the first cutbacks during water shortages provided that the M&I contractors could get improved access to Article 21 water and improved ability to store SWP water. Removing the water management practices, particularly storage outside of the service area and flexible storage, would upset the balance obtained in the Monterey Amendment and affect the M&I and agricultural contractors unevenly. Alternative 5 omits major provisions of the Monterey Amendment that balanced the interests of the agricultural contractors, the municipal contractors and the Department and which would be crucial to some of the contractors.

Although Alternative 5 would reduce some or all of the potentially significant impacts to a less-than-significant level, the Department finds that eliminating the water supply management practices would not meet several key objectives of the proposed project, such as resolving conflicts and disputes between and among the urban and agricultural SWP contractors and the Department about water allocation and related issues pertaining to the management and financing of the SWP. It would also constrain desirable statewide flexibility of water management by the Department and its contractors, introduce uncertainty in the continuation of desirable groundwater banking and conjunctive use of water resources, and remove a mechanism for sharing of water supplies among SWP contractors. In addition it would upset the balance obtained in the Monterey Amendment and affect the M&I and agricultural contractors unevenly.

After considering all these factors and considering the numerous competing and conflicting interests involved, the Department finds that Alternative 5 is infeasible because it does not meet some or all of the key project objectives which are essential to the success of the proposed

project in achieving the underlying fundamental purpose of the proposed project and are therefore undesirable from a policy standpoint based on a reasonable balancing of economic, legal, social, technological and other considerations.

**Proposed Project - Monterey Amendment:**

In the preceding discussion on the no project alternatives and Alternative 5, the Department finds that there are no feasible alternatives that would avoid or lessen the potentially significant adverse environmental impacts associated with the Monterey Amendment and still meet enough of the key project objectives to be acceptable choices for implementation. The discussion below expands on those discussions with regard to potential impacts and potentially feasible alternatives for each action of the Monterey Amendment which could result in a potentially significant and unavoidable impact.

The water supply management practices are the only elements of the Monterey Amendment determined to have potentially significant and unavoidable direct impacts. These impacts could occur as a result of the development of groundwater banking facilities in the southern San Joaquin Valley and as a result of the flexible storage provisions relating to Castaic Lake and Lake Perris. These impacts do not include impacts relating to the transfer of the KFE property since those impacts were determined to be less-than-significant after mitigation. The final EIR also found that the growth-inducing impacts of the permanent transfers of Table A water and the water supply management practices could result in potentially significant and unavoidable indirect impacts.

Storage outside a contractor's service area. Storage outside a contractor's service area was found to have potentially significant impacts on terrestrial biological resources and on cultural and paleontological resources. With implementation of Mitigation Measures 7.4-2, 7.13-2, 10.1-3, and 10.1-19, potential impacts to resources in the southern San Joaquin Valley would be reduced to a less-than-significant level. Implementing these mitigation measures is within the responsibility and jurisdiction of local agencies. Although local agencies have a legal obligation to comply with CEQA and all other applicable laws at the time any further proposed activity takes place, the Department has no jurisdiction over these properties and no jurisdiction over local agency decisions. Since the Department cannot enforce implementation or monitoring of such mitigation measures, the potential impacts on terrestrial biological and on cultural and paleontological resources were found to be potentially significant and unavoidable.

The only alternative that would avoid the potentially significant impacts on these resources in the southern San Joaquin Valley would be to eliminate the possible use of groundwater storage banks outside the KWB Lands. The Department finds that eliminating the use of groundwater storage banks outside of the KWB Lands is not a feasible alternative for reasons which include the following: the existence of groundwater basins in the southern San Joaquin Valley, the need to use areas outside the KWB Lands in order to recharge water into parts of the basin that would not be recharged effectively from the KWB Lands, the benefits to agencies in Kern County that want to make lands available for local storage as well as storing water from outside of their service areas, and the benefits to agencies outside the southern San Joaquin Valley that want to store water in southern San Joaquin Valley.

The Department finds that storage in the southern San Joaquin Valley would provide public water supply benefits throughout the SWP service area and finds that including groundwater banking in the southern San Joaquin Valley is an essential part of the Monterey Amendment and the overall agreement would not be feasible without this provision. Furthermore, the Department finds that the potential impacts that would occur in the event that local agencies did not implement the mitigation measures identified in the final EIR are an unlikely but necessary environmental cost of proceeding with the provisions of the water supply management measures regarding storage outside the service area and the Monterey Amendment.

Flexible Storage Provisions: In the unlikely and worst-case scenario, prolonged borrowing of water by eligible contractors from Lake Perris and Castaic Lake allowed by Article 54 of the Monterey Amendment would expose a wide band of barren soil and silt. The final EIR found that this could lead to potentially significant adverse impacts for Castaic Lake on terrestrial biological resources, visual resources, and recreation; and for Lake Perris on terrestrial biological resources, riparian habitat, visual resources, geology and soils (soil erosion), air quality (wind erosion) and recreation.

The final EIR identified several mitigation measures (7.9-1, 7.13-4, 10.1-15, and 10.1-20) for some of these impacts. The Department finds that these mitigation measures will partially mitigate the impact; however, the residual impact will remain significant.

The only alternative that would have avoided the potentially significant impacts on these resources at Castaic Lake and Lake Perris would be to eliminate the flexible storage provisions for these reservoirs. The Department finds that eliminating the flexible storage provisions is not a feasible alternative because it would substantially reduce the benefits to

the eligible contractors. These benefits were important to the affected contractors as an offset against the loss of water to these contractors resulting from other changes in the Monterey Amendment as a result of the change in allocation during times of shortage. The Department also finds that the worst-case conditions are unlikely and that any resulting impacts will be temporary. The Department finds that flexible storage provisions at Castaic Lake and Lake Perris would provide public water supply benefits throughout much of the southern California part of the SWP service area. The Department also finds that including these provisions was an essential part of the Monterey Amendment and the overall agreement would not be feasible without this provision. Furthermore, the Department finds that the impacts that would occur in the event that worst-case conditions occurred are an unlikely but necessary environmental cost of proceeding with the provisions of the water supply management measures of Monterey Amendment, including flexible storage.

Growth-inducing impacts: The final EIR identified, in general terms, potential impacts and mitigation measures that could result from local development decisions to accommodate population increases. The types of impacts and mitigation measures are common to urban development projects and some impacts may be significant and unavoidable.

The final EIR concluded that the Department does not have authority or control over local planning decisions and that local decision-making agencies are the appropriate entities to make CEQA evaluations at the local level. The Department does not have the authority to control land use decisions involving private activities or to oversee land use regulation by cities and counties. The potential environmental impact of growth is subject to more detailed environmental review by local decision-makers at the project level when development projects are brought forward. Project-level EIRs prepared by local decision-makers are subject to their independent analysis and determinations.

The only alternative available to the Department that would have avoided the potentially significant indirect growth-inducing impacts would be to eliminate the water supply management practices and the permanent transfers of Table A water. The Department finds that eliminating these provisions is not a feasible alternative because it would substantially reduce the benefits of the Monterey Amendment to most urban contractors. These benefits were important to the urban contractors as an offset against the loss of water to these contractors resulting from other changes in the Monterey Amendment as a result of the change in allocation during times of shortage.

In addition, the Department finds that although the Department serves as lead agency for this EIR and is making the analysis of the growth-inducing impacts known to the public and to other public agencies, practical and legal considerations make it infeasible for the Department to analyze all site-specific impacts and impose limitations on the growth that may result from the availability of the water. The considerations are discussed in DEIR Section 8.3.3 and FEIR Subsection 8.2.2 (see especially pages 8-10 to 8-12) and include the following:

- The EIR estimates the potential population that could be supported if the proposed project were implemented and identifies potential impacts and mitigation measures that could result from local development decisions to accommodate that population in general terms. The level of detail contained in the DEIR for growth-inducing impacts and reliability analyses is consistent with the general level of review required for the Monterey Amendment. Even though the Department is aware of or could speculate about a few of the local decisions that may rely on water made available from the proposed project, these decisions require extensive information about local facilities, local water resources and local water use that is not available to the Department. The potential environmental impact of growth is subject to more detailed environmental review at the project level. Project-level EIRs prepared by local decision-makers are subject to an independent determination and disclosure of significant environmental impacts.
- The Department does not have the authority to control land use decisions involving private activities or to oversee land use regulation by cities and counties. Even if the Department had the authority to make such decisions at this level of detail, it is not practicable for the Department to analyze each individual decision made by local government that might rely upon increases in SWP water from the proposed project and then to monitor or second-guess each individual decision made by local government or to establish general rules that would govern these decisions. The Department rejects the idea that it should use its management of the SWP to manage or block future economic growth including housing that would serve the State's growing population. These decisions are within the authority and control of and properly deferred to local decision-makers where specific projects can be more fully described and are amenable to detailed analysis. This approach is consistent with the traditional legislative policy that fundamental decisions regarding land use and growth are made through the general planning process at regional and local levels. The Department's role in water reliability planning includes the issuance of the SWP Delivery Reliability Report every two years



which informs local decision-makers of water supply limitations of SWP water and is discussed in FEIR Subsection 9.2.6.

- Although the Department does not have statutory authorization to establish mandatory requirements regarding water reliability and growth, it supports local and regional water planning and conservation efforts through statewide planning and through grants and local assistance programs. Demand reduction and water conservation strategies are important tools in water management planning and the Department is involved in a number of legislative and administrative actions designed to provide a regional or statewide approach to these strategies. See DEIR pages 11-5 through 11-7. The Department is taking a leadership role and is actively involved in many of these efforts. See FEIR Subsection 5.2.3.2 for a discussion of the relationship of the proposed project to other water policy actions dealing with water supply reliability and growth, water conservation, and Delta protection. Such measures are not alternatives to the Monterey Amendment and implementation of such measures would not be affected by the Monterey Amendment. See FEIR Subsection 11.2.4.

#### **Proposed Project - Settlement Agreement:**

In the preceding discussion on the no project alternatives and Alternative 5, the Department finds that there are no feasible alternatives that would avoid or lessen the potentially significant adverse environmental impacts associated with the Settlement Agreement and still meet enough of the project objectives to be acceptable choices for implementation. The discussion below expands on those discussions with regard to potential impacts and potentially feasible alternatives for each action of the Settlement Agreement which could result in a potentially significant and unavoidable impact.

The watershed improvement program for Plumas County is the only element of the Settlement Agreement determined to have potentially significant unavoidable adverse environmental impacts, which were short-term cultural and paleontological impacts. With implementation of Mitigation Measures 7.13-6 and 10.1-20, impacts to cultural and paleontological resources in Plumas County would be reduced to a less-than-significant level. Implementing these mitigation measures is within the responsibility and jurisdiction of local agencies in Plumas County. Although local agencies have a legal obligation to comply with CEQA and all other applicable laws at the time any further proposed activity takes place, the Department has no jurisdiction over these properties and no jurisdiction over local agency decisions. Since the Department cannot enforce implementation or monitoring of such mitigation measures, the

potential short-term impacts on cultural and paleontological resources were found to be potentially significant and unavoidable.

The only alternative that would avoid the potential impacts of the watershed improvement program is elimination of the watershed improvement program entirely. The Department finds that it is not feasible to eliminate the program because it is a material term of the Settlement Agreement and a critical element of obtaining the plaintiffs' consent to the Settlement Agreement. Accordingly, the Department finds that the potential impacts that would occur in the event that Plumas County did not implement Mitigation Measure 7.13-6 and 10.1-20 are an unlikely but necessary environmental cost of proceeding with the watershed program and with the Settlement Agreement.

### **III. GENERAL DETERMINATIONS RELATING TO THE PROPOSED PROJECT'S CEQA DECISION MAKING PROCESS**

Throughout the Department's review of the proposed project, several matters have been discussed and/or evaluated that are not the cause of or directly related to any significant environmental impact from the project. Accordingly, CEQA findings on such matters are not required. Nonetheless, to provide as much information as possible to the public, the Department includes herein a number of "General Determinations" with respect to the proposed project for the purpose of expanding on or clarifying such matters.

#### **CHANGED CONDITIONS**

Some commenters stated that it is possible that the proposed project could have an effect on ongoing projects and activities, including on groundwater or surface water in the Sacramento or San Joaquin Valley outside of the Delta. Others stated that the DEIR failed to properly consider the impact of observed and predicted climate change and altered hydrologic conditions in California as they affect the EIR analysis and the operation of the SWP with respect to the Monterey Amendment. The Department makes the following determinations with regard to changing conditions.

- The terms of the long-term water supply contracts, including the Monterey Amendment, do not determine how the Department will operate the SWP facilities to meet regulatory requirements, but determine how SWP supplies (as limited by environmental, hydrological, biological, legal and other factors) and costs are allocated among the contractors. The long-term water supply contract terms may also determine how exported water is managed and where SWP contractors might store SWP water (if it is to be stored) if they have been allocated sufficient SWP water to store after meeting their current needs. To the degree that hydrologic and regulatory conditions permit, the Department will pump available water from the Delta to meet operational and contractor needs with or without approving the proposed project. The Monterey Amendment cannot and does not change hydrologic conditions or legal or regulatory requirements in effect at the time of export, including applicable permits and constraints to protect area of origin, water quality and listed fish species. (FEIR, Subsections 5.2 and 6.2.)
- Ongoing conditions and activities are part of the environment in which the proposed project will operate and may affect the magnitude of impacts of the proposed project on the environment. The analysis in the DEIR did not identify any significant impacts of the proposed project on ground water or surface water in the Sacramento or San Joaquin Valley outside of the Delta. Current and future operations and activities of the SWP and its contractors may have an impact or be affected by ongoing conditions and

activities in these areas and are discussed in the context of cumulative impacts. (DEIR Section 10.1 and FEIR Subsections 6.2 and 10.2.)

- Hydrologic change and climate change can be characterized as a change in future conditions under which the proposed project will operate. The proposed project does not cause these changes to occur. However, these future conditions have the potential to influence the “environment” in which the proposed project operates and may affect the magnitude of future impacts of the proposed project on the environment. In the context of how operational actions under both existing and future conditions were evaluated in the DEIR, a sufficiently broad range of potential future hydrologic conditions was applied to the analysis of the proposed project and its relationship regarding hydrology and water supply. The hydrologic conditions applied appropriately reflect the extremes in annual climate variability, from very dry hydrologic cycles to very wet hydrologic cycles that could be expected over the next 20 years. Operations modeling performed in support of the DEIR reflect the above variability – analyzing 73 different years throughout the SWP’s history. This modeling covers a wide range of hydrologic conditions, from multi-year dry periods where releases were very restricted, to wet periods where releases were less restricted. This modeling was designed to provide input to the environmental analyses to evaluate a broad range of potential future hydrologic conditions that reflect the expected variability in regional climate. The EIR’s analysis of climate change’s impact on the SWP builds upon this information and shows how deliveries could be changed based on climate changes. Over the coming decades, the Department expects rainfall, snowmelt, and runoff patterns to be different from year to year, just as they have historically varied on an annual basis. As such, the measures included in the DEIR were formulated and analyzed to successfully operate the SWP under a very broad range of anticipated hydrologic conditions, including conditions resulting from climate change.
- Some comments suggested that the EIR’s forward looking analysis should use a longer time frame, such as to 2035. The Department believes that the time frame selected is adequate for full analysis of the impacts of the proposed project and a new evaluation extending to 2035 is not necessary. A longer period of analysis would not identify any new impacts or define any increase in the severity of those impacts already analyzed. (DEIR, Chapter 6 and 12 and Appendix F, FEIR, Subsection 6.2 and pages 12-8 to 12-10.)
- The EIR’s analysis of water supply management practices with regard to effects on the Delta is conservative, and likely overstates the project’s potential adverse environmental impacts on the Delta. The project’s future impacts on the Delta would likely be less than those identified in the EIR because there would be fewer years in which San Luis Reservoir would

fill, there would be fewer opportunities to pump water for programs such as storage outside of a contractor's service area, and the SWP contractors would realize fewer water supply benefits of the proposed project. In effect, the EIR overstates the impacts of the water supply management methods of the proposed project on the Delta, under scenarios where less water is available to be allocated by the Department due to climate change, loss of Delta export capacity, dry hydrology, increased regulatory constraints, or related factors. In addition, many of the impacts of the water supply management methods have been quantified during a period when contractor requests have been less than full Table A amounts, thereby allowing banking of some of their water supplies. For all these reasons, the proposed project's potential impacts on the Delta are likely overestimated for future conditions. And although reduced supplies from the Delta might result in more use of the flexible storage provisions relating to Castaic Lake and Lake Perris than anticipated, the EIR analyzed the potential worst case scenario for flexible storage. (FEIR Subsections 6.2.2.2 and 7.2.2.1.3.)

- Some comments on the DEIR appear to express a concern that the water delivery estimates in the EIR are overstated and that local governments and other decision-makers might rely on the EIR delivery estimates in determining the reliability of SWP water. Overstating the amount of water available could be a problem in documents that are relied upon for determining water reliability (see determinations regarding water supply reliability below). For an EIR, however, if the EIR overstates deliveries, the consequence is that it also overstates environmental impacts related to those deliveries. In an environmental disclosure document such as an EIR, it is better to overstate, rather than understate, the potential impact so that the public and decision-makers can see the full environmental extent of their decisions. The values in the EIR analysis should not be used to estimate current available SWP water or the reliability of future deliveries. (DEIR, Chapter 9, FEIR Subsection 6.2.2 2 and Chapter 11.)

## **CLIMATE CHANGE**

Climate change is an important issue in water resources planning. The proposed project's potential contribution to climate change was analyzed, as was climate change's potential impact on the proposed project. The proposed project could increase greenhouse gas emissions through increased energy use, primarily as a result of moving water further downstream in connection with permanent transfers of Table A amounts from agricultural contractors in the San Joaquin Valley to M&I contractors in southern California. Potential growth inducing impacts could also include increases in greenhouse gas emissions. In addition, climate change and other hydrologic changes could affect water supplies and deliveries. The Department makes the following determinations with regard to climate change:

- The EIR provides an analysis of the effect of the proposed project's energy use, the changes in overall SWP energy sources, and the resulting changes in GHG emissions. The Monterey Amendment could cause an approximately 2.0 percent increase in SWP energy use in 2020, which would cause between approximately 40 to 56 thousand metric tons of CO<sub>2</sub> equivalent emissions. The Department is currently pursuing a number of energy saving steps that will ultimately reduce GHG emissions from operating the SWP by over 30 to 35 percent less than the SWP's emissions in 1990. Because the proposed project would not result in a substantial increase in energy use and because the Department will be using cleaner energy sources in the future for the SWP which produce significantly less CO<sub>2</sub> equivalent emissions per unit of energy generated, the proposed project would not result in a significant increase in GHGs. Furthermore, even including any increase in energy use from the Monterey Amendment, the SWP will significantly reduce GHG emissions by 2020, consistent with the AB 32 mandate. The analysis of GHG emissions in the final EIR is consistent with the approach approved by the Natural Resources Agency in its amendments to the CEQA Guidelines to address analysis and mitigation of the potential effects of GHG emissions (effective March 18, 2010) (DEIR, pages 12-14 to 12-15 and FEIR pages 12-3 to 12-4).
- In general, urban water end use is more energy intensive than agricultural water end use, and thus, depending upon the type of energy applied to transport water, a shift from agricultural to urban end use could result in more GHG emissions. The EIR also recognizes that the proposed project may result in changes in growth patterns at the local level, but would not have an effect on statewide population growth and thus within the SWP service area as a whole, the proposed project would not result in any changes in GHG emission due to growth. (DEIR, pages 12-14 to 12-15 and FEIR, pages 12-2 to 12-3.)
- The EIR identifies potential increases in population that could be supported by the proposed project and it identifies, in general terms, potential impacts and mitigation measures that could result from local development decisions, including increased GHG emissions. (DEIR and FEIR Chapters 8). Impacts of changes on local development are also discussed above in Part I.B in the Specific Finding regarding growth-inducing impacts of the proposed project.
- The effects of climate change on the proposed project are analyzed in the EIR. Table A deliveries could decrease by 10 to 25 percent under the baseline scenario and with the proposed project with the greatest effects occurring in critically dry years. The differences between the baseline scenario and the proposed project are negligible and the Table A transfers

and altered water allocation procedures would have no effect on the SWP's vulnerability to climate change (DEIR page 12-13). Overall, given current SWP facilities, SWP water supplies will become less reliable under the trends that have been identified with climate change with or without the Monterey Amendment. (DEIR, pages 12-12 to 12-14 and FEIR, pages 12-6 to 12-8.)

- Many of the impacts identified in the EIR would generally become more severe if more water is available for delivery to contractors. However, climate changes in the future may reduce (not increase) the amount of water available to the SWP for deliveries to SWP contractors. If water supply reductions caused by climate change had been included in the impact analyses, most of the impacts would be less. Therefore, as discussed above in the General Determination under Changed Conditions, the EIR may in fact overstate the impact of the proposed project under scenarios where less water is available to be allocated by the Department due to climate change, loss of Delta export capacity, dry hydrology, increased regulatory constraints, or related factors.

## **BASELINE**

Because the SWP had been operated under the Monterey Amendment for over seven years before the Department issued its Notice of Preparation of the DEIR in 2003, the EIR analyzes two time periods – historical or past (1996-2003) and future (2003-2020). Both time periods have a baseline of 1995. The Department makes the following determinations with regard to baseline.

- Consistent with the scope of the proposed project, the baseline established in the EIR is the operation of the SWP in accordance with the pre-Monterey Amendment long-term water supply contracts adjusted to include certain specific events that are expected to occur over time and that are not related to the Monterey Amendment or the Settlement Agreement. These assumptions or events include full Table A requests in 2020 and several Table A transfers and water supply management practices that were not the result of the Monterey Amendment. The Department included these assumptions in the baseline because it considered them independent of the Monterey Amendment and because this approach would be helpful to the public and decision-makers in that they can compare the proposed project and alternatives to the baseline and to each other. This approach permits a more thorough and relevant evaluation of potential project impacts. (DEIR, Chapter 5 and FEIR Subsection 6.1.)
- Environmental conditions for Delta fisheries have declined since the baseline was established and the environmental constraints that were in place at the time the baseline was established have changed. However,

the same operating constraints are included in the proposed project and all the alternatives including the no project alternatives. The FEIR updates the discussion of Delta fisheries, describes actual and potential regulatory changes, and concludes that a revised baseline would not change the comparative differences between the proposed project and alternatives. To the extent that more stringent restrictions are placed on SWP export operations from the Delta, impacts caused by the proposed project may be reduced. (FEIR, Chapter 7.2.)

## METHODOLOGY

Throughout the EIR preparation process, the methodology of the EIR has been extensively discussed. After considering input from all sources, the Department utilized a combination of tools to identify and evaluate potential project-related impacts, including the CALSIM II model, spread-sheet modeling, and historically-based analyses. The Department makes the following determinations with regard to the methodology used in the EIR:

- The Department evaluated the validity and usefulness of the CALSIM II model, considered the substantial input both in support of and against the use of the model, modified the methodologies applied in the EIR in response to such input, and conducted a thorough impact analysis founded on those methodologies, including the CALSIM II model. The EIR identified both benefits and limitations of the analytical tools used in the EIR and determined that they provided the best available evaluation and quantification of potential impacts related to the proposed project. (DEIR Chapter 5 and FEIR Section 6.3.)
- Although some comments on the DEIR argued that CALSIM II should not be used, the Department determined, after considering the strengths and shortcomings of the CALSIM II model, that CALSIM II was an appropriate tool to analyze the effects of the proposed project and its alternatives on SWP operations and deliveries to SWP contractors. The Department recognizes that CALSIM II, like any model, is not a perfect model. In addition to CALSIM II, spreadsheet analyses were conducted, including analyses of historical data, to address impacts not readily modeled by CALSIM II and to use data sources beyond the CALSIM II sources. The proposed project was implemented more than a decade ago and substantial historical data was available and productively used in the analyses. In addition, some spreadsheet analysis was performed to supplement and provide a check of certain CALSIM II output. (DEIR Chapter 5, Appendices F, G, H, I and K, FEIR Section 6.3.)



## WATER SUPPLY RELIABILITY

The possibility that local decision-makers might approve urban developments that would not have been approved if they relied on a more realistic assessment of likely future water deliveries from the SWP was termed a “paper water” problem because reliance was arguably incorrectly placed on water that exists only on paper in the form of SWP long-term water supply contracts. The “paper water” issue with regard to the proposed project is really a question of whether local planners recognize the limitations on the reliability of SWP supplies and more specifically whether the Monterey Amendment might contribute to local planners’ misunderstanding of water supply reliability. In Chapters 9 of the DEIR and FEIR, the EIR addressed whether the proposed project would create adverse environmental impacts due to local planners’ misunderstanding of SWP water supply reliability (or unreliability). It also addressed the effect of implementing Article 18(b) as a no project alternative on local planners’ understanding of water supply reliability. Some comments on the DEIR argued that the elimination of Article 18(b) was significant because if it were implemented, it would result in a firm yield number that would caution local planners that SWP water supplies were less reliable than if the firm yield number were larger. Some comments also argued that the elimination of Article 21(g)(1) eliminated a valuable tool to reduce reliance on Table A amounts for local development. The Department makes the following determinations with regard to water supply reliability:

- Growth based on “paper water” may exist, but the evidence does not show that a “paper water” problem was created by the contractual SWP Table A amounts in the SWP long-term water supply contracts, or by any changes made in the Monterey Amendment. (DEIR Section and FEIR Subsections 9.2.4 and 9.2.6.)
- Land use decisions are not made in a vacuum, such as relying only on a Table A number found in the SWP long-term water supply contracts. There are many other factors local decision-makers consider. The fact that there are disputes over the Department’s analysis for the Reliability Report (established in the Settlement Agreement as a means to address “paper water” concerns), that there are lawsuits challenging UWMPs and local planning decisions, and that there are efforts being made in legislative and regulatory arenas to improve decisions relative to land use and water supply, is evidence that local and State decision-makers recognize the “common sense” connection between water availability and growth and are making efforts to address it. (DEIR Section and FEIR Subsections 9.2.4 and 9.2.6.)
- The elimination of Article 18(b) from the long-term water supply contracts is not likely to result in adverse environmental impacts. Using a single firm yield number is not useful or relevant to SWP water supply planning today,

and will not necessarily eliminate the risk of a “paper water” issue. Like most other surface water supplies, SWP supplies fluctuate, so in some years more water may be available and in other years less water may be available. The Department considers processes such as the Reliability Report (which includes in its assessment the impact of climate change and Delta pumping restrictions) and other means of urban water management planning to be a more effective means of making local government aware of the variability and limitations of the SWP water supply. (FEIR Subsection 9.2.3.)

- The elimination of Article 21(g)(1) from the long-term water supply contracts is not likely to result in adverse environmental impacts. The EIR shows that the development of an economy dependent on the sustained delivery of Article 21 water is unlikely to occur, at present or in the future. Article 21 water can be stored for later use and water that has actually been previously stored can constitute a source of water that can be relied upon in local water supply planning.
- The proposed project did not and will not create a “paper water” problem. The proposed project may, in fact, help alleviate the “paper water” issue due to the availability of better information regarding the variability of SWP water supplies, including the Department’s biennial Reliability Reports which are now prepared by the Department as a condition of the Settlement Agreement.

## **KERN FAN ELEMENT TRANSFER**

The EIR analyzed the potential environmental impacts related to the transfer of the Kern Fan Element (KFE) property from State to local control (called KWB Lands after the transfer occurred). The Department makes the following determinations with regard to the KFE property transfer:

- Uncertainties regarding State use of the KFE property as a groundwater facility ultimately convinced the Department in 1993 to halt feasibility and design work on the project. These uncertainties included proposed revisions of environmental and water quality standards and difficulties in obtaining required local agency approval for development of a State groundwater bank. (FEIR Subsections 16.2.1 and 16.2.2.)
- Some comments incorrectly suggested that by transferring the KFE property the Department gave away 1 million acre feet of water. In the 1980’s the Department considered a 1 million acre foot KFE storage program. This storage capacity does not imply that 1 million acre feet of water existed in the groundwater basin. The Department’s proposed 1990 KFE groundwater storage facility was to have a 350,000 acre foot storage capacity. Although some emergency spreading of high flows on local

rivers resulted in water recharged on the property prior to the transfer, no SWP water was banked or stored on the KFE property prior to its transfer. (FEIR Subsection 16.2.2.1.)

- The Department had the authority to transfer the KFE property. (FEIR Subsection 16.2.2.3.)
- The Monterey Amendment also included the retirement of 45,000 acre feet (AF) of Table A amounts collectively by KCWA and Dudley Ridge Water District. Member entities of KCWA and Dudley Ridge Water District are the member entities of the KWBA. Their ownership allocation in the KWBA mirrors their share of Table A that was retired. Some comments on the DEIR suggested that the 45,000 AF of Table A transferred is “paper water” and did not result in a benefit to the SWP because it was not available in all years. Although the full 45,000 AF of Table A amounts can only be delivered some of the time, it can be delivered when it is available and thus provides a benefit to the SWP. It is no different from all other Table A amounts where the proportionate share delivered each year depends upon hydrology and regulatory constraints. Retirement of the 45,000 AF provides a benefit to all contractors in times of shortage. Reducing the total Table A amounts by 45,000 AF means that each contractor’s Table A amount becomes a slightly higher percentage of the total Table A amounts and thus a slightly higher claim on the available water during a shortage. The retirement also provides a partial offset against the shift of water to agricultural use resulting from the change in allocation procedures during shortages. (FEIR Subsection 16.2.4 and 16.2.8.)
- Water sales resulting from the transfer did not stimulate growth in southern California. Water sold from the KWB has been primarily for users in KWBA’s service area. Water transferred out of the KWB has been primarily for Environmental Water Account purposes. Impacts of these purchases, which will not be continued in the future, are discussed in environmental documents prepared for the Environmental Water Account, and are not the result of the Monterey Amendment. (FEIR Subsection 16.2.11.)
- The Department purchased the KFE property with the idea of storing surplus water during years of abundant supply for extraction and use in dry years by developing a water recharge and recovery facility. The Department considered a number of options for the lands, including the option of transferring the lands to local control. It had not considered using the land for other purposes such as environmental protection or drought storage for emergency preparedness. The transfer did not alter a fundamental purpose of the KFE property when owned by the Department. The same land is used for similar intended purposes— to store surplus water during years of abundant supply for extraction and use

in dry years by developing a water recharge and recovery facility. (FEIR Subsection 16.2.5.)

- The transfer does not have an effect on other SWP contractors. The existence of a State-owned bank would have no effect on total deliveries to all SWP contractors averaged over the 73-year period of hydrologic record. (FEIR Subsections 16.2.3 and 16.2.5.)
- The transfer does not have an adverse effect on the Delta. The use of the KWB Lands as a locally-owned facility does not increase, and may decrease, the amount of water transferred out of the Delta compared to a State-owned facility. This is because in the case of allocating Article 21 water in wet years, KCWA would receive only 25% of the total Article 21 water supply with a locally-owned bank; whereas in the case of a State-owned bank, the Department would deliver available water for storage in the bank, before offering it to SWP contractors. Therefore, there could be more water exported and greater potential impacts on the Delta from a State-owned bank. (FEIR Subsections 16.2.3, 16.2.5, 16.2.6, and 16.2.7.)
- KCWA could have delivered all SWP water stored in the KWB Lands from 1995 through 2004, absent the KWB Lands, in other Kern groundwater storage projects. (FEIR Subsection 16.2.7.)
- The Department conducted a study as required by the Settlement Agreement (found in Appendix E to the FEIR) and concluded, among other things, that the KWB is operating as intended and within the confines of the Kern Environmental Permits. (FEIR Subsection 16.2.5.)
- The nature of the management and membership of the KWBA and the relationships with its participants and surrounding land owners relate primarily to the KCWA entities and their share of use of the KWB Lands. For the most part, these issues are beyond the scope of the EIR because, although they may touch on public policy issues, they are generally not issues suitable for analysis in an EIR. To the extent that these concerns relate to the environmental impacts of the transfer of the KWB Lands, they are addressed in the EIR. To the extent that these concerns relate to each party's share or use of the project, including private parties, these are primarily social, economic and public policy issues that pertain to the contractual and other arrangements among water users in Kern County, and legislative issues that pertain to how water entities are formed and operated. It is beyond the scope of the Department's authority to identify, monitor, or regulate each individual decision made by local government. Such an analysis would require decisions about water supply and use that traditionally have been made locally. (FEIR Subsection 16.2.8 and 16.2.11.)

## **CONTINUING TO OPERATE UNDER THE MONTEREY AMENDMENT AND THE SETTLEMENT AGREEMENT**

The Department received comments from the plaintiffs and others that the Department must make completely new decisions on the Monterey Amendment following certification of the new EIR. These comments contend that once the Superior Court's order under Public Resources Code section 21168.9 is satisfied, the "interim effectiveness of the Monterey Amendments will expire" and DWR must make a new approval decision and re-execute the Monterey Amendment and related contracts. With regard to these issues, the Department makes the following determinations:

- The Department and all but two of the SWP contractors, acting pursuant to their respective lawful authorities, approved most of the principles of the Monterey Agreement and authorized execution of an amendment to their respective SWP long-term water supply contracts. This amendment is known as the Monterey Amendment and includes the transfer of the Kern Water Bank (KWB) Lands. In 1995 and 1996, the parties executed the Monterey Amendment for each contractor and the KWB Lands were conveyed to Kern County Water Agency and then to the Kern County Water Authority. Since that time, the parties have been operating pursuant to these contracts.
- In 2003, acting pursuant to their respective lawful authorities, the Department, the plaintiffs and most of the SWP contractors executed the Settlement Agreement entered in *PCL v. DWR*. In 2003, as required by the Settlement Agreement, the Department and the SWP contractors that are parties to the Settlement Agreement also executed the Settlement Agreement Attachment A amendments to the SWP long-term water supply contracts regarding, among other things, changing the term "entitlement" to the term "Table A". Since that time, the parties have been operating pursuant to the Settlement Agreement and the contract changes.
- In 2003, the Department held scoping sessions and began the process of preparing an EIR on the Monterey Plus proposed project –the Monterey Amendment and the Settlement Agreement – as well as alternatives to the proposed project including four versions of a no-project alternative. The Department has independently reviewed, analyzed and discussed all the issues raised during preparation of the final EIR on the proposed project, including scoping sessions, review by the EIR Committee created by the Settlement Agreement and review by the public of the DEIR on the proposed project. (FEIR Subsections 4.2.2.2 and 4.2.2.3.)
- In February 2010, the Department certified the final EIR on the proposed project. The final EIR analyzed the significant environmental impacts of the Monterey Amendment and Settlement Agreement as

previously executed by the Department and parties to those documents. As discussed in Part I of these Findings and Determinations, the proposed project includes mitigation measures which are within the Department's existing authority. None of these mitigation measures includes any alterations or changes to either the Monterey Amendment or the Settlement Agreement or any other related document.

- After considering the final EIR and the alternatives, the Department has determined that the proposed project can be carried out by continuing to operate under the existing Monterey Amendment (including the Kern Water Bank transfer) and the existing Settlement Agreement (including the Attachment A amendments to the State Water Project long-term water supply contracts) in accordance with the terms of those documents as previously executed by the Department and the other parties to those documents. The Sacramento County Superior Court, on remand in *PCL v. DWR*, did not invalidate or set aside the Monterey Amendment or the Department's approval of the Monterey Amendment. On the contrary, in accordance with the parties' joint request, the Court explicitly ordered that the Department could continue to operate the SWP in accordance with the existing Monterey Amendment, as it has done since 1996. The Department has also operated under the existing Settlement Agreement since the Court approved it in 2003.
- The Department concludes that its decision to carry out the proposed project by continuing to operate under the existing Monterey Amendment and the existing Settlement Agreement does not require re-approval or re-execution of the Monterey Amendment or the Settlement Agreement. The Department also concludes that it is not necessary to re-approve or re-execute any other contracts that implement the Monterey Amendment or the Settlement Agreement including the KWB Lands transfer or the Settlement Agreement Attachment A Amendments to the SWP long-term water supply contracts. In reaching these conclusions, the Department considered the evidence in the record and all options available to it under the law, including the opinion in *PCL v. DWR*, the Superior Court's Order on remand in *PCL v. DWR* and other appropriate legal sources.